Public Utilities
FORTNIGHTLY

VOL. IX; No. 12 JUNE 9, 1932

The Effect of Depression Dollars on Utility Finance

What today's price levels are doing to the theory and to the laws of rate making, and the new problems they are presenting to the public service corporations.

BY SAMUEL CROWTHER

ONCE more the subject of utility rate making and with it the whole utility financial structure are in utter confusion. And once more it is apparent that this confusion has been brought about by the application of legal principles to the solution of an economic question.

The rules for rate making which have been established by the learned decisions of various courts would now, if rigidly applied in the manner in which in the past they have been applied, ruin every utility company in the country. For none of them could pay their fixed charges on the new low rates which would have to be established by the very formulas which have cost millions of dollars to bring into general practice.

It would now seem to be in order to discover whether these rules, which involve the very existence of utilities and the whole theory of rate making and financing, have been founded on anything other than shallow opportunism. There is not even a hint anywhere that the economic background has ever been considered or that it has been within the comprehension of anyone that the very conditions on which the whole structure was predicated were not in themselves permanent.

To be explicit: If a utility rate be fixed by a regulatory body at a level which will not yield a return upon the capital reasonably invested, then plainly the rate is confiscatory. However, the utility might have invested, through bad judgment or worse, more capital than was needed. Plainly it would not be in the public interest to perpetuate the errors of the promoters in the calculation of proper rates. Out of this arose the principle that the true criterion was not the capital actually invested but the reproduction cost of the properties. This seemed fair and equitable enough and it put the utilities in a very solid position. For their managers were not unmindful of the fact that, although advancing engineering science was constantly effecting economies in construction and operation, there has not been a time between the beginning of this century and 1929 when a property, unless the extravagance in its building was gross, could five years later be reproduced at its original cost.

The valuation of the railroads is a case in analogy. The late Senator La Follette, years ago, powerfully contended that the railroads were asking a rate of return on the water in their capitalizations and that a government appraisal was needed to show what they were really worth. Thus began the valuation of the railroads which developed into a combat between the railroads and the government appraisers, with frequent excursions into court to decide principles and procedures. The whole thing is now just one more way of spending money. But the point is that, much to the glee of the railroads, it was shown, in valuation after valuation up until 1929, that the properties could not be reproduced for what they had originally cost—no matter how extravagant the promoters had been. The radicals who backed the valuation as a chance to expose railroad perfidy quietly walked out on the show. The results have even deterred some of the talk of government ownership, for it appeared that the properties could not be taken over at any fair valuation that would not yield a fine profit to the owners. But, just as William Jennings Bryan in his Free Silver campaign of 1896 was defeated, not by the spellbinders for the gold standard, but by a group of men working under John Hays Hammond and Cecil Rhodes on the other side of the world, so the ability of the utility and railroad people to defeat the radicals in their rate-making principles by a complete acceptance of the radicals' terms has been due to no extraordinary acumen or lack of it on either side, but to the controlling circumstances of the economic order.

It is not too much to say that both sides were utterly ignorant of the existence of these circumstances. The victories have been due to a player who was not known to be in the game.

To be explicit: The period from the panic of 1873 until just before McKinley's election in 1896 was one in which the general price level declined. In 1895 the gold from the great Rand mines, opened by Messrs. Rhodes and Hammond, began to get into the price structure of the world and by decreasing the value of gold raised the prices expressed in gold. It was the rise in

prices which defeated Bryan, for he had been advocating the coining of silver at a fixed rate as the only method by which prices could be raised.

He had claimed that gold was too dear. The new supply of gold proved that he had been right in his premises. But he had been wrong in his remedy. And since then, except for a dip in 1907 and another dip in 1920–21, the general price level had been steadily rising until the fall of 1929. Then came the break, and the general price level has since been sharply descending so that now the raw commodity prices are nearly at the 1899 level. This has fundamentally changed the whole problem of utility rates and finance.

THE utilities grew up during a time when prices were slowly rising—when the position of the debtor was always being slightly improved over that of the creditor. The utilities have been built largely out of funds raised by bond issues and thus they belong to the debtor class.

Now everything is reversed. But since the fundamentals of the former condition were not known, the fundamentals of the present condition are not known and there is a general floundering about to make the old rules fit and a vast bewilderment because they so patently do not fit.

It will not help matters to try to reduce the explanation of the situation to a few pert phrases nor will it help to dodge the question entirely, as has been the fashion, and instead talk grandly and mysteriously about adjusting world conditions and inter-allied debts and so on and so on. The problem is here in the United States and has to be faced.

The problem is that of the price level, which in turn is a problem of money. The relations between the general price level and the management of money have scarcely entered the life of anyone in this country, for the active lives of those who are now in charge of our affairs have been passed during a period when the general price level has not had to be considered. Therefore, the vague and easy explanations of the law of supply and demand have served quite well enough for the easy situations which have arisen. And likewise, it has been enough to keep money talk down to "inflation" and "deflation" with a few pious references to the gold standard and the Rock of Gibraltar.

NOT until lately has there been a glimmering that perhaps the explanations of prices and conditions and all that which may be found in, say, most bank bulletins have little to do with realities—that they may just be conventionally fantastic, like the masks used in Chinese theaters.

The law of supply and demand will

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not explain the economic *miasma* which has settled over this country. We have been in the habit of using prices to express values, but prices no longer express values. During the boom, the prices of securities, for instance, were explained as including the hopes of the future. That was not the real explanation but it answered the purpose. Today's prices do not even express the despair of the future. They do not express anything. And, should we apply our old price rules as measures of value, then almost nothing in the country is solvent. No matter how rigorously the book values of properties have been written down, the resulting figures are not market values, for there are no purchasers. The picture is one of confusion.

Apparently it is impossible for anyone to do anything. But such is not really the case. Nearly all of the trouble is due not to the thing itself but to our treatment of it. Following the lead of the bankers, the community has, with what under other circumstances would be splendid firmness, insisted on the patient taking medicine for a disease he has not got. The patient has been treated in orthodox fashion according to the principles of the classical economists. But the disease is not one which they knew, for they had no laboratories in which to discover the workings of the more intricate functions of the body economic. We now have at hand the necessary data. It is accepted by all those who have given any real study to the subject. It is not accepted by everyone, for it goes counter to some of the hallowed dogma of finance. It may be recalled, however, that it took some time to spread the conviction that vaccination is a preventive of smallpox, and by no means everyone has as yet become convinced.

It must be very plain that today's low prices differ markedly from the low prices that we have previously known. A low price gained by efficiency is wholly desirable. Today's prices are not the result of efficiency. Then what has caused them?

A profound distinction exists between the general price level and the specific price series, such as the various cost of living indices and the wholesale commodity indices. The difficulty with any price index is that its representative character may be destroyed by the undue weight given to some commodity or group of commodities. Both the cost-of-living index and the commodity index are so heavily weighted with foodstuffs that really they represent agricultural movements rather than general business movements. They are often not much more than weather reports. Neither retail nor wholesale prices are alone representative of actual conditions, for retail prices lag considerably and some commodities, notably pig iron, do not move in point of time with general business. A great deal of harm has been done in the past by too implicitly following the pig iron index.

The general price level, as it has been developed by the Federal Reserve and a number of distinguished economists, is a very broad compilation which includes some hundreds of series, both at wholesale and at retail, and also includes wages and other services. It is truly representa-

How the Reproduction Cost Principle of Rate Making Came Into Vogue

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tive of the price level on which society is operating and is so broad as not to be at all affected by the antics of a single commodity. As will be subsequently developed in this article, this general price level index, which has now been carried back to the early part of the last century, makes available knowledge that we have not previously possessed.

It is always taken for granted, in discussions of depressions and falling prices, that a boom is a time of great overproduction and that a depression follows inevitably in order to give a chance to consume the surplus goods that have been produced. This is merely applying the law of supply and demand. One discovers that through the ages the learned pronouncements during depressions do not vary much. If a depression be particularly severe, it is put down to an extraordinary rise in production during the boom period, and so always the social reformers, who as a race can be depended upon never to go behind the obvious, always bring forward plans for the regulating of production.

During the present depression we have had all sorts of plans—for combining industries so that they may regulate their output, unemployment schemes which aim to divert part of the wages of good times into a pool to be used in bad times, and a host of four and five-day week plans with five and six-hour day appendages. The assumption is that, depression being due to underproduction caused by a previous period of overproduction, the remedy must be found in leveling, as the phrase goes, the peaks of production.

For much of the overproduction, of course, machinery is to blame. For instance:

> "This mechanical equipment having at last been made ready, the work of using it for production has in turn begun and has been prosecuted so efficiently that the world has within recent years and for the first time been saturated, as it were, with

the results of these modern improvements."

That particular quotation happens to be taken from a book published by the noted economist, David A. Wells, in 1889! I have found the same sort of thing being said at intervals and with an air of great originality back as far as 1820. If those who have been saying it during the last two years were marshaled four abreast, the parade would take a week to pass a given point.

DURING a depression, goods and services move very slowly and so always it seems that there is a surplus of goods and a surplus of men. A few years ago someone with great solemnity reasoned that these apparent surpluses were not due to overproduction but to underconsumption. That made everyone happier until they discovered that they could no more explain underconsumption than overproduction.

If the overproduction theory be sound, there should be a long list of basic commodities whose overproduction culminated in 1929. There is no such list. The troubles in copper started shortly after the war, the rubber overproduction reached a peak in 1922 when the Stevenson Committee was formed, while sugar has been in trouble since 1919. Oil was getting into rather good condition in 1929 and its chief troubles with surplus have been since then—although consumption has kept up at record rates. The big cotton crop was some years ago and the big wheat crop was 1928. There has lately been no surplus of hogs, corn, or cattle. It is true that the building industry had an enormous rise, but it began to run off in 1928 and, while a great number of automobiles was produced in 1929, the production was all in the early part of the year, for the automobile trade is very elastic and keeps production closely in line with consumption.

There has been much talk about the enormous extension of plants and facilities and, although anyone can point out a new factory here or there, there is no statistical evidence to support the assertions of unusual increase. The total industrial output of the country is roughly about equal to the net invested capital. That is to say, the capital turns about once a year. New plant construction cannot easily involve more than four or five per cent of the national income and there is no evidence that we reached even this figure during the period ending in 1929.

IF we examine into specific industries, we find no evidence of any considerable surplus capacity unless we take every plant and every piece of machinery as a potential producer, regardless of its efficiency. But surplus capacity, did it exist, would be just as useful in a plant as in a motor car. It would be abnormal and wasteful to have the plant capacity of the country exactly geared to consumption.

As a theoretical proposition, economists have always denied the possibility of any general overproduction, for that would mean that everyone in the world was satiated with goods. It is equally absurd to talk about depression as a result of overproduction unless it can be shown that a great number of lines of activity overpro-

duced at exactly the same moment. From the illustrations that have been given, it is evident that the major commodities which are in trouble did not overproduce in 1929 and that the troubles of most of them go five or ten years back. The troubles of coffee were most acute in the early part of the century when the valorization scheme went into effect.

Karl Marx accepted without question the theory of overproduction, and his principles are based on that acceptance. It is odd to discover that many—perhaps most—of our leading bankers and business men have accepted the same theory equally without question. One of the reasons why the arguments of capitalism and socialism checkmate is that both sides accept the same facts as true.

THE notion of violent overproduction has grown out of limited facilities for measuring production and trade. It is quite easy to see what can be called an overproduction of, say, cotton or wheat, because whatever quantity remains unsold seems to be surplus. It has not been until lately that we have had any real measures of total production and trade. They work havoc with the old theories. Through the work of Carl Snyder, a broad measure of production and trade has been devised which includes all varieties of production, as well as the exchange and movement of goods. It is a volume index and not a price index. We often confuse price declines with volume declines. At the present time most chain stores, and especially the grocery stores, are moving more tonnage than ever before but prices are so down on the staple lines that their dollar volume is usually less.

The volume picture, as developed by Mr. Snyder, is more than surprising. Instead of a great burst of production during the years following the war, we find that the rate of pre-war increase was not resumed until nearly 1925 and that the increase from then on to the smash was not out of line but actually was less than many increases over similar periods before the war which did not result in depression. The war was not a period of high production but, on the contrary, a period of low general production—the high production came in only a few lines and was not enough to lift the average. The total volume of production and trade in this country has increased for about a century at a rate of 4 per cent a year, while the rate for Europe has been about 3 per cent. Therefore, war or no war, we were bound in time to have supremacy. General overproduction, we now know definitely, has never existed.

ALL of this seems far away from the problems of the utilities. That may be why so few utility men

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have taken the above facts into consideration. Actually they are vital to long range planning, for, with the facts of the general price level and the facts of production and trade, we are for the first time able to discover something about what makes prices.

THE principal money that we use in this country is the bank deposit—bank checks account for about 97 per cent of all business transactions. To the extent of about 90 per cent these deposits are the result of bank borrowings. So it is the amount of bank money that is important and not the amount of hand currency. Under our fiscal system, the withdrawal of a hand money from circulation into hoarding is important only in that it prevents the banks from building up the proper reserves on which to extend credit.

At first it is hard to grasp that the bank notes and coins that we use are of so little importance in the general picture, for long ages have accustomed us to the belief that they are the real money and that all other forms of money are only substitutes for them. It is, however, the banks which create most of our money. When a bank makes a loan, it credits the account of the borrower and thereby increases its total of deposits. The total of bank deposits represents the bulk of the purchasing power of the nation.

If we plot the curve representing the volume of production and trade with the curve showing the general price level, there seems to be no connection between them. This disposes of the theory that the law of supply and demand makes prices.

The real explanation of the general price level comes when we plot with these two curves the curve showing the amount of bank loans and investments outstanding. It is at once apparent that when the loans and investments increase at a more rapid rate than production, the price level goes sharply up but when the loans decrease or do not increase with trade, then the price level drops.

From 1897 to 1907, credit increased more rapidly than trade, and prices rose. From 1907 to 1915 the volume of credit increased at nearly the same rate as production, and prices remained steady.

From 1893 until 1896, and again from 1929 until date, there were no net expansions of credit, and in the present period an actual decrease. Therefore, in both periods we find prices rapidly going down.

WHAT does this mean? We do business with prices—that is, we exchange goods and services for goods and services through the medium of prices. If the standard of value in which prices are measured changes, then either the creditor or the debtor is in trouble. If the medium of exchange shrinks, then it increases in purchasing power—which means that prices fall. In that case the debtor is harmed, for he must give more purchasing power in payment of his debts than when they were incurred. If the medium of exchange increases, then the creditor is harmed.

It is apparent that, if a smaller volume of purchasing power is available, its units must each be worth more than before, and, since debts

The Effect of Rising Prices on the Original Cost Theory of Utility Valuation

"It was shown, in valuation after valuation up until 1929, that the properties could not be reproduced for what they had originally cost—no matter how extravagant the promoters had been. The radicals who backed the valuation as a chance to expose railroad perfidy quietly walked out on the show. The results have even deterred some of the talk of government ownership, for it appeared that the properties could not be taken over at any fair valuation that would not yield a fine profit to the owners."

and fixed charges are on the old dollar scale, it is burdensome, if not impossible, to pay them with the new units.

That is the trouble right now. From 1922 until the middle of 1929, credit increased at a higher rate than production. This credit found its way into security speculation, just as during a similar period terminating in 1920 the surplus found its way into commodity speculation. During the final days of the bull market of 1929, credit was pyramided and circulated with extraordinary velocity. Then came the inevitable straining and the break.

The quick decrease in market values caused the calling of bank loans on collateral. These demands for liquidation brought prices down still further. The canceling of each loan made a decrease in the total volume of credit. The bank depositors began calling for their money. This forced the sale by the banks of their own marketable bonds—a process which still further depressed the market. As commercial loans came due, they were not renewed. That decreased credit.

And so today we have between six and nine billions less bank credit in use than if a normal expansion without any sudden increases had taken place since 1926. That is, we have been compelled to revalue our business affairs on a definitely lower economic level.

But, since debts remain on a higher level and they cannot be paid out of income earned on the lower level, the country is threatened with general insolvency.

THE depression is no more the result of general overproduction than it is of the phases of the moon. This is purely a monetary depression. And the cures must be monetary. When one says "monetary," at once tradition calls up printing presses working all night to print money. That is not the money, as has been pointed out, which to us matters. The money that we need for business is bank money—the ability and the willingness of the commercial banks to put into circulation an amount of credit in consonance with the needs of the country. That, in the opinion of the leading economists of the country, can clearly be done by the Federal Reserve Banks through the credit increasing powers which they have. Equally it is possible in the future to contract the amount of credit and prevent the wild excesses of 1928-29. That, indeed, is the function of a central bank, for it is certain that without a stable money business cannot function and most certainly the utilities cannot function.

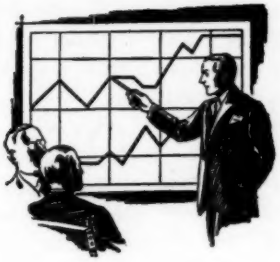
SIR Josiah Stamp has said that the discovering of a stable money unit is the most important question now before the world. It is the most important question before the utilities of this country, for practically all of their present troubles trace directly to the change in the purchasing power of the monetary unit. For this puts their incomes on one plane and their fixed charges on a plane considerably above.

Fortunately, in the Federal Reserve System we have already at hand every needed power for the raising of the price level to a point where incomes can be earned on the level at which debts were incurred. These powers will be fully used when their use is comprehended and demanded by the intelligent section of the public. Otherwise we are apt to have crank money schemes forced on us. There are plenty of them in the offing.

INFLATION? There is no difference in the amount of harm done by either inflation or deflation. If credit increases faster than production, we have inflation, which brings on speculation and eventual ruin. If credit decreases faster than production, we have business stagnation, unemployment, and eventual ruin. The point is to provide the needed credit and the amount needed cannot be left to luck. The engineering of money is far behind the other forms of engineering.

The Present Opportunity of the Holding Company

Because JOHN T. FLYNN *is one of the most articulate as well as one of the best informed and persistent critics of utility holding corporations, he was invited by* PUBLIC UTILITIES FORTNIGHTLY *to set forth his views on what these companies could do and should do, during the current period of depression and readjustment, to set their houses in order, reorganize their financial setups, and prepare for the upturn in industry on a basis that will avoid in the future some of the weaknesses revealed in the past. His reply will appear in the coming number—out June 23rd.*



THE CRISIS PRECIPITATED BY THE POLITICIANS'

Imposts on Industry

The Rising Costs of Government and the Revolt of the Taxpayer

The economic situation in the United States has reached an *impasse*. Either business must be relieved of the crushing burden heaped upon it as the result of the government's reckless extravagances and incursions into the realms of nongovernmental enterprises, or radical curtailments must be made in the government's unprecedented broad field of activities. This article, as well as the two others to follow, is of pertinent interest at this preelection period, when efforts are being made by some office seekers to still further extend the scope of governmental functions to include the operation of public utility enterprises.

By HERBERT COREY

In my native state of Wyoming there was once a public-spirited rich man who established a telephone service and made the rates so low that even a sheepman could have a party line. Then the legislature thought up a lot of new taxes and tied him up in regulations and some of the real old hair-faced legislators said that if he stepped on the faces of the poor it would be over their dead bodies. So he reeled up his wire and sold his posts and went out of business.

"Here, here," said the court, "you cannot do that. You are a public servant and so you must stand for whatever it is the public does to you."

"I've done done it," said the public-spirited rich man.

"But," said the court, "if you discontinue the service the citizens of Sawgrass county cannot communicate with each other."

The public-spirited rich man spoke up sadly:

"If they did communicate with each other they wouldn't have nothing to say," said he.

That is the way I am beginning to feel about the citizens of these United States. They have nothing to say. They have been kicked around by officeholders and professors and they have only opened their poor mouths to gasp like goldfish. So far as I am concerned I am not sorry for them. Nor am I sorry

for myself, for I have been as dumb as my neighbors. People like you and me, who have had the things done to us without protest that have been done to us during the last fifteen years have no right to bellyache about it.

The only thing I can hope for is that the job-holders and professors will go right on cuffing us around until we get good and sore. We cannot reason. We are as immune to logic as a cast-iron dog is to hot cornmeal mush. But if we get mad enough we can raise hell.

CINCINNATI was at one time the grafters' paradise. The citizens were God-fearing, industrious, frugal, and pacific. They were made to order for the politicians and racketeers who consider office holding a business. Then one day there was a riot and the law-abiding citizens kicked some of the officeholders loose from their teeth and some were killed. This was regrettable and clergymen deprecated at high speed. Today they say that Cincinnati is one of the best governed cities in the United States. Perhaps the best governed. There is, thank Heaven, no moral in this story.

I SHOULD take time out at this point for an explanation. Now and then reference will be made to "professors." The reader will observe that I regard a professor with misgivings. But the professor I mean need not have any college degree whatever, or ever have been near a college faculty. The kind of man I have in mind when I speak of professors is a serious, suspicious, angry little theorist who is hell-bent to do somebody good at any cost whatever to anyone else. They are usually vocal, superior, and full of very sinister forebodings.

Now let us get back in line. We have been talking about hard times!

OF course, the times are hard, but the trouble is that our heads have been soft. We have been letting the professors and dear old ladies who think in demi-quavers unite in good works with politicians and job-holders until every fifth dollar that any one of us makes is taken to pay for the structure of sillinesses they have built up.

One dollar in five!

Let me thrust that prod in a little deeper. Not that it will do any good. One dollar in each five is taken to pay the costs of the various forms of government under which we are trimmed up by racketeers and held up by kidnapers and stuck up by hijackers. If we were getting what we pay for in the matter of government it would not be so bad, but we are not. We are paying the costs of evangelizing professors and bright-eyed old ladies who are not happy unless they have their hands on our adenoids. The statistics uncovered by the National Bureau of Economic Research, which is as reliable as any authority in the country, show that fifteen of us work all day in the vineyard to keep the sixteenth sitting in the cool shade of the governmental roof.

One person in sixteen works for some one of our various forms of government.

It is frequently stated that one person in nine is in governmental employment, but some authority dissected the figures and shows that only one person in sixteen is sitting so pretty. There is neither good sense

nor good argument in exaggeration and, anyhow, one person in sixteen is plenty. Then I discover from another authority that there are fewer than 30,000,000 families in the United States today and that the total indebtedness of the nation which the taxpayers must carry as a more or less permanent load has reached the astounding total of $30,300,000,000.

Therefore, each family has been saddled with a debt of more than $1,000, which must be paid in taxes.

The situation is dramatically stated by United States Senator Vandenberg of Michigan:

> "All government in the United States, meaning Federal, state, and local, cost $14,000,000,000 in 1930, or $45,000,000 every week day of the year. To pay this bill took the equivalent cash value of the entire annual production of our motor factories, all our iron and steel furnaces, all our rolling mills, all our slaughterhouse and meat packing, all our men's and women's clothing industry. The drain is devastating. It cannot go on."

PROSPERITY is not to be hoped for while we are paying such taxes. They have blocked the wheels of the American wagon. The man who pays out every fifth dollar cannot use that fifth dollar to buy groceries. The man who sells groceries cannot take his fifth dollar to buy an automobile. During the abnormal good times of 1928 and 1929 we did not feel the load, it is true, and if we did feel it we expected to be rich in another day or two and so it did not matter. Now we have fewer dollars and every one that is taken from us in taxes postpones by an infinitesimal fraction of time the possibility of recovery.

The Alexander Hamilton Institute puts it clearly: The average family with an income of $2,840 in 1929 paid only $360 in taxes, direct and indirect, whereas today the average family with an income of only $1,800 pays $400 in taxes. In 1912 the expenditure for all forms of government was $2,000,000,000 and the national income was $33,000,000,000. In 1931 the expenditures came to $12,000,000,000 and the national income was $54,000,000,000. To bring the government expenditures back to the 1912 ratio to income, it is estimated that:

> "The present figures of $12,000,000,000 would have to be reduced to almost $3,000,000,000, or 75 per cent."

To put that fact in another way we are committed and our sons and daughters are committed and our grandsons and great-grandsons are committed to cruelly high taxes. No matter how high our national income may rise the tax rate will climb after it. Professors and honest and sincere

¶ "PROFESSORS *and honest and sincere old ladies and young men and women in need of incomes and grafters have sold to the governments of this country, Federal, state, and local, a lot of ways in which money can be spent which are not even remotely related to the proper business of government. Each one of these activities breeds like a guinea pig. In order to make it appear that they are in fact functions of the government, laws are passed.*"

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Therefore, we find that we are not only being robbed by the professors and old ladies and bright young men and women and the grafters but we are also being regulated out of all human endurance.

There is a cure, of course. A very simple one.

The Republic of France (which is no idol of mine since she discovered what a nation of intellectual Nancies we are and acted on the discovery) tried that cure in 1790 or thereabouts. It was then burdened with a number of gentlemen she regarded as nuisances and she cut their heads off right behind the ears. Such measures would not be needful in the United States, where we are so enlightened that we let the bootleggers run the country rather than use common sense. But we could make an adaptation of the French measures.

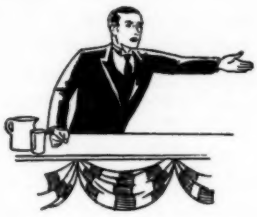
We could put our governments, Federal, state, and local, back in the business of governing.

At present our governments are a combination of luxurious poorhouse and Eden for evangels. If you think our governments are governing, in return for the incredible sums they are costing us, read the crime news in the daily newspapers.

That cure once successfully tried in France will be taken one of these days. Natural law will be served in spite of the professors who have been over-riding it lately. When a not-so-very-bright individual loses his job, he spends what money he has on hand. Then he borrows where he can. When he can borrow no more he sells his house and moves into two rooms. The natural laws that apply to the individual also apply to the government. When it is definitely and finally broke it must do the same thing.

But we are not yet sufficiently broke. We have not suffered enough. We will wait until we are forced to move into the two-rooms-and-bath. Then the Young Squire will wait on the corner for our baby girl when she goes to her work at the five-and-ten-cent store, twisting his moustache (if the fashion magazines have issued a moustache permit) and our young son will get an honest job running a machine gun for some gang. Then we will give our governments the cure. We will get rid of the hitch-hikers.

Because the Federal government takes approximately thirty cents out of each dollar we pay in taxes and because it has become such a standardized hog that it is easy to point out its defects, I shall make it today's horrible example. But whatever is here said of the Federal government applies in some measure to every state and city and county. Every one of them has been spending money like a lake sailor in Toledo, Ohio. The only hope that the money-spending debauch will ever end is that some



The Political Effect Upon Office Seekers of the Army of Office Holders

"THERE are too many millions of men and women living on the government—there were 2,819,000 in 1927—and they all have votes and they can and do scare their Congressmen and city councilmen and county supervisors into a gibbering fear of losing office. If the taxpayers got together they could offset that fear with a greater one."

day the taxpayers may get mad. Here and there the taxpayers have gotten together and they have bent the money-spending officeholders like warm candles. But I will have something to say of that at another time.

WHAT are the real functions of the Federal government?

There are only four—or so it seems to me.

An armed force must be maintained that can protect us from aggression by a national enemy and a diplomatic establishment which can supplement the rude strength of ships and doughboys by the pleasing arts of soft sawder.

Police and judicial forces must be organized for the preservation of domestic order.

Our young people must be given the rudiments of education, without frills or special courses, instructions in bending, tatting, or playing tunes on combs. Our forefathers were as intelligent as we are. They got along with the three R's. Education beyond that stage should be the subject of private treaty between those interested.

The fourth activity should be the collection of enough money in taxes to pay the moderate costs of such a form of government, plus the upkeep and amortization of our national debts.

IF that formula were followed the most absurd and the most extravagant structure of government ever built up would be scrapped. I know that it will not be adopted now. There are too many millions of men and women living on the government —there were 2,819,000 in 1927—and they all have votes and they can and do scare their Congressmen and city councilmen and county supervisors into a gibbering fear of losing office.

If the taxpayers got together they could offset that fear with a greater one.

But that is another story.

What could the Federal government get rid of without doing the country any harm? The time will come when it will be forced to get rid of the barnacles, harm or no harm, but for the moment only a painless extraction will be considered.

How much real injury would be sustained by the United States if—just to suppose—the Department of Agriculture were abolished?

There are certain supervisory functions that could be turned over to some other department, such as that of inspecting killed meats. Apart from such minor matters the Department of Agriculture has existed largely for the purpose of tickling the farmer under his hairy chin, in order to get his vote. To justify itself the Department has made the farmer so efficient that he is now producing more than he can sell and so he is going broke. The country banks are stacked high with mortgages that can never be redeemed unless and until we have another war. The lists of tax sales are appallingly long. If the Department had not tried to make a business man out of the farmer and permitted him to go on farming, he would not be in this plight.

The Department cost something like $330,000,000 last year and it will cost more this year if it has its way. Perhaps it will not have its way this year. The Department of Commerce cost $61,477,117 last year. There is no governmental agency like it anywhere in the world. It is superbly efficient, far-reaching, enterprising, and well managed. But is it worth the money? There are certain things it does which might be entrusted to some other department, such as keeping lights burning in lighthouses. But the good works with which we associate the Department of Commerce could mostly be done quite as well by private business. The Associated Press ably handles the news of the world, and that is proof to me that a similar organization could gather the business news of the world as well as the Department now does.

"But the business men will not do these things," urges the Department of Commerce.

To which this crushing reply is offered:

"Then these things are not worth doing. Business will always pay for what it really wants."

In the Bureau of Standards—just to imagine another instance—are 300 of the finest scientists in the world. The work they are doing is interesting and valuable, I am assured. But if the work is interesting and valuable then private business should be permitted to do it. If private business is saving money on its laboratories at the cost of the mass of taxpayers then I am justified in setting up one prolonged whoop. Consider this instance. Not long ago the Bureau of Standards sent out a leaflet in which the effect of heat and dampness on leather was studied at exhaustive length. No doubt that was valuable to a tanner. But why not let the tanner make that study for himself?

The ten money-spending departments are not alone at this feast of

public money. There are the independent establishments — bureaus, commissions, and whatnot. There are in all something like 250 separate activities which have nothing whatever to do with the business of governing. If I go mad and plan to enter the chicken business the government will tell me how to do it. It instructs me in home-building and after I have put down the first instalment on the little nest the government will tell me how to go about making love in it. It plans the baby's pants and measures the radio activity of the stars. It is a swell wholesale business but—judging from the reports in the newspapers—it is not so much as a government.

THERE is the United States Shipping Board, to cite another example. President Hoover is trying to get rid of it by the processes of death and dry rot. Experience has shown him that an appeal to Congress to discontinue any board which can pay salaries is futile. If the government had racked its merchant fleet after the war and then let it alone—selling vessels to any one who wanted to cut them out of the herd—we would have been the Lord knows how many millions better off. The Board is as decadent as a French poet now, but its out-of-pocket cost in 1930 was $11,494,000.

But I have no space for a thoroughgoing dissection of the nongovernmental jobs the government is paying for. I will not labor the point. Either I have made it or I have not made it. But I want to put this little stinger in at the end.

The tax-eaters may get away with it this year and next year but they cannot go on getting away with it forever.

THE reader may feel that I have taken an unnecessarily pessimistic view of the national financial position. My own belief is that at the worst I can only be charged with realism.

Let us examine the unpleasant facts.

There are certain irreducible charges against the annual income of the Federal government, comprising the payment of interest and the amortization of the national debt, and allowances made to veterans.

For the moment we will disregard the present actual cost of the Departments of Justice, Interior, and the Treasury and assume that they were pared to the bone and then the bone was scraped, until the three departments were being operated at the lowest conceivable cost. In that case the income and irreducible outgo of the government may be roughly tabulated as follows:

¶ *"IT is at this perilous juncture in national affairs that theorists—well-meaning theorists but still theorists—would upset the apple cart by taking from the tax-paying owners the various forms of public utilities which are still making some show of headway against bad business and overtaxation."*

Federal income for 1932:...$4,000,000,000	
Irreducible charges against it:	
Payment of interest on and amortization of the national debt	$1,213,000,000
Veterans' allowances	1,000,000,000
Army and Navy	700,000,000
Cost of Justice, Interior, and Treasury Departments at lowest estimate	15,000,000
Senate and House at lowest estimate	4,000,000
Total irreducible charges	$2,932,000,000
Total income	$4,000,000,000
Irreducible charges	$2,932,000,000
Balance out of which must be paid all the other costs of government	$1,068,000,000

In other words, little more than one fourth of the government's annual income goes toward paying the actual costs of governing. This is not a fair statement, for other irreducible charges may be produced at a moment's notice and the costs allowed above for the three departments and the Senate and House are millions of dollars below the costs which will in all probability ever be assented to. The other irreducible charges are not here produced because I do not wish to incur the charge that I am trying to frighten the taxpayer.

If the statement of annual costs is dissected it will be found to be unduly favorable to the Treasury's position. The debt and veterans' charges must be taken at face and the present cost of a skeletonized army and an aging navy cannot be reduced by more than the few thousand dollars which useless navy yards now cost annually in order to provide votes for Congressmen and an occasional army post which has the same function.

LAST year's cost of the Justice Department was $13,124,949 and of the Senate and House $11,700,000. No one will question that the Department of Justice and the Senate and House must be continued unless the present form of government is scrapped—which in the light of recent events is not unthinkable so far as the House is concerned. It seems, then, that a total charge of $19,000,000 for Congress and the Departments of Justice, Interior, and the Treasury is on the conservative side.

There remains to Uncle Sam the sum of $1,068,000,000 from which he must pay all the costs of government. Senator Vandenberg of Michigan declares that, after making allowance for every contemplated saving, three quarters of a billion other dollars must be saved if the budget is actually to be balanced. Out of this sum of $1,068,000,000 the Federal government must provide for:

> "Ten executive departments, 40 independent establishments, 200 bureaus, boards, and commissions, and 550,000 employees."

If three quarters of a billion dollars must be saved out of $1,068,000,000 to balance the budget there remains the sum of $318,000,000.

It is not a rest cure that is needed. It is a major operation.

IT is at this perilous juncture in national affairs that theorists—well-meaning theorists but still theorists—would upset the applecart by taking from the tax-paying owners the various forms of public utilities which are still making some show of headway against bad business and overtaxation.

Add public ownership to a public deficit, shake well, and then run.

The compound is explosive.

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

Sign seen in a broker's office.

"PRE-SHRUNK SECURITIES FOR SALE."

AL SMITH
Former Governor of New York.

"Power was the one thing I put my hand to that I could not arouse the people over."

SIR JOSIAH STAMP
Director of the Bank of England.

"Society today is more imperiled by well-meaning reactionaries than by irresponsible Reds."

MERLE THORPE
Editor and publicist.

"From 18,000,000 to 20,000,000 of our citizens are now dependent upon tax payrolls for their support."

ED. HOWE
Kansas journalist and sage.

"Business men are always talking about their overhead. They should better realize their political overhead and handle it more efficiently."

PHILIP H. GADSEN
Vice president, The United Gas Improvement Co.

"Make no mistake, public utility operating companies are *quasi* public corporations and either will be regulated in some manner or will become municipally owned and operated."

EDWARD F. FLYNN
Assistant counsel, Great Northern Railway Company.

"If our laws were amended so the railways could engage in waterway transportation, then 'coördination,' the present catch-word in transportation, might be made more efficient."

C. M. RIPLEY
Electrical appliance manufacturer.

"Nobody ever saw a kilowatt hour, or a photograph of a kilowatt hour; and I have had a standing order for our art department in Schenectady to draw a picture of one for me, for five years, but they haven't filled my order yet!"

ALEX F. DEARBORN
Advertising man.

"Isn't it true that few people understand anything at all about utility economics? This public ignorance is what makes the subject an amazingly fertile issue for the politician. He has only to mix a few half truths with a liberal dose of fear and prejudice and there it is on the front page."

"From 100 to 3,000 Per Cent Profit"

An analysis of some extraordinary claims of extraordinary returns to investors in utility corporations—as made by some political office-seekers.

By HENRY C. SPURR

In support of assertions that commission regulation of public utilities has broken down and that dissatisfaction with it is "widespread," some surprising statements have been made as to the amount of utility profits, especially those of the electrical industry.

It has been said that, as a result of, or in spite of, commission regulation, stockholders have been allowed to earn as high as "from 100 per cent to 3,000 per cent profit" on the money they have actually invested in the business.

Sometimes the Federal courts have been blamed for this. Sometimes the commissions have been held at fault. Sometimes both have been declared responsible. Be that as it may, even a profit of 100 per cent would be taken by most persons as convincing evidence that there is something wrong with the theory or practice of regulation no matter who is to blame for it.

The 100 per cent profit allegation was the beginning of a tendency to crystallize the enormous-earning propaganda into specific figures. This is a step in the right direction. It is an effort to furnish a bill of particulars. For that the political critics of regulation should be commended.

But the 100 per cent profit claim which was a record for a while did not stand very long. Soon the accusation passed the 500 per cent mark. The record claim to date appears to be that profits have run as high as 3,000 per cent annually.

Accusations that electrical companies are earning up to 100 per cent are probably aimed at operating companies; but when it is said that stockholders' profits run from 100 per cent to 3,000 per cent, the critics probably have the holding company in mind.

The reader who does a little thinking on his own hook might well be puzzled at the wide difference between statements of state regulatory commissions that they allow a return of

only 7 or 8 per cent and the claim of certain political leaders that stockholders are permitted a profit of from 100 to 3,000 per cent. The reader will probably hesitate to believe that commissions could be hoodwinked to that extent, or that the commissions would deliberately misrepresent the facts. On the other hand, he might well ask how political leaders could make such strikingly bold and definite specifications as to profits unless there were some basis for them. It must not be forgotten that these statements are sponsored by political leaders of the highest rank. That, together with the enormity of the charge, must at least arouse the reader's curiosity and make him wonder what is wrong with, or what is missing from, the picture, if anything.

SUPPOSE we speculate about this a little and see if it is not possible to harmonize these apparently incongruous profit figures. We must not assume that the claims of either the state commissioners or of the political leaders are erroneous if they can be reconciled.

With this purpose in view, let us see what can be done with this electrical or "power trust" profit puzzle.

Say we start with the statement that stockholders have been able to make as high as 100 per cent a year on the money actually invested instead of the 7 or 8 per cent which the commissioners say they allow. At first glance this would seem to be an offspring of the "inflated valuation" charge. For the purpose of this article "inflated value" may be taken to mean any value which exceeds the amount of the prudent investment in the property of utility companies.

On reading the assertion that stockholders have been able to earn as high as 100 per cent or more on money actually invested in electrical companies, one might jump to the conclusion that this must be because the commissions have allowed the companies to earn a return on an "inflated value" of the property; and that if the companies were held down to a 7 or 8 per cent return on the prudent investment, this unusually high percentage of profit would be wiped out.

A little reflection, however, will show that this could not be what is meant.

SUPPOSE we assume that an electrical company plant is built and put into operation at an actual prudent cost or investment of $2,000,000. If an 8 per cent return were allowed on this investment, the annual income would be $160,000. One might think offhand that if a value of double that amount were placed on the property, this would produce a 100 per cent profit but that would not be so. Let the reader figure it out for himself. If a value of $4,000,000 were fixed by the commission as the rate base and an 8 per cent return allowed on it, the return or profit would be $320,000 a year which would be only 16 per cent of the prudent cost.

If the profit on the money actually invested in the property were 100 per cent, the annual income would have to be $2,000,000 a year. Consider how much the actual investment would have to be inflated under the present value theory in order to produce a rate base which, at 8 per cent, would yield an annual income of

$2,000,000! It will be seen that the commission would have to enlarge the $2,000,000 investment to $25,000,000. In other words, the present value would have to be put at twelve and one half times the original cost or prudent investment. To produce a 1,000 per cent return, the rate base would have to be increased from $2,000,000 to $250,000,000. To allow a 3,000 per cent profit on the total original investment, the rate base would have to be jacked-up from $2,000,000 to $750,000,000, or 375 times the actual investment.

THE reader will see the absurdity of such a supposition by considering what happened to the value of real estate—ordinary houses and lots—during the period of the greatest inflation of prices following the war. Take, for example, a modest house and lot which cost the owner $10,000 before the war. How much did such property appreciate in value? Possibly in some instances properties of that kind might have doubled in value where, through curtailed building operations, there was a shortage of houses; but no one would believe that houses and lots which cost $10,000 before the war could be sold for $125,000 afterwards, and certainly not for $3,750,000. There was some inflation but not to that extent.

AN examination of more than 200 reports of commission investigations of the business of electrical companies in the last seventeen years will show that the difference between the prudent investment in the property and the rate base actually fixed by the commission, even when prices were at their peak, was by no means as great as the critics of commission regulation would have the public believe. It would be a very rare case, indeed, if the present value basis of fixing rates made more than a slight difference in the percentage of return, or would have permitted a reduction of as much as a penny a day in the bill of the average domestic consumer of electricity.

It will, therefore, be seen that assertions that stockholders have been able to earn from 100 to 3,000 per cent on their actual investment cannot possibly be based on the theory that the courts have permitted the companies to earn a return on the present value of their property rather than the prudent investment in it. The assertion that stockholders can earn these enormous percentages must be based on some refinement of

¶ "THE *reader who does a little thinking on his own hook might well be puzzled at the wide difference between statements of state regulatory commissions that they allow a return of only 7 or 8 per cent and the claim of certain political leaders that stockholders are permitted a profit of from 100 to 3,000 per cent. The reader will probably hesitate to believe that commissions could be hoodwinked to that extent, or that the commissions would deliberately misrepresent the facts.*"

the prudent investment theory. That refinement must be that the stockholders should be allowed a return upon only what their equity in the property has cost them, or on what it ought to have cost them if the total investment in the property had been prudently made. As ordinarily understood by courts and commissions, the prudent investment theory means the prudent cost of the property, no matter from what source the money comes; whether from the sale of stock or bonds or both. The source of the invested money is deemed immaterial to the company's customers.

So it will be seen that the idea that the stockholders should be held to a reasonable return on the money they have themselves put into the property, as suggested by some of our political leaders, is a substantial modification of the prudent investment theory as understood by the courts and commissions.

THE difference between the operation of the two theories on the fortunes of the stockholders and the ratepayers may be illustrated in this way:

Assume that there are three houses side by side on a certain street. The value of the three properties to tenants is the same. Each house and lot, let us say, cost $15,000. The condition of each is the same. Each is as good as new. For the purpose of easy figuring, assume that 10 per cent on the actual investment (disregarding taxes and other expenses) is a reasonable charge for rental. The owner of the first house paid cash for it. The owner of the second put in $3,000 of his own money and borrowed the rest on first and second mortgages at 6 per cent. The owner of the third house inherited it. The property did not, therefore, cost him a penny of his own money.

According to the prudent investment theory as understood by the courts and commissions, the rent of each of these houses should be the same; that is to say, 10 per cent on $15,000, their actual cost, or $1,500 a year.

Under the modification of the prudent investment theory as expounded by political leaders, the rent of the first house would still be $1,500 a year because that was the amount of money the owner actually invested. The rent of the second house, however, would not be $1,500 a year but only $1,020. That figure would be arrived at in this way: The sum of $12,000, the amount borrowed, at 6 per cent interest, would amount to $720 a year. Allowing 10 per cent on the $3,000 actually invested by the owner, we have the sum of $300, the amount of the owner's profit. Adding $300 to $720, the interest carrying charge, we have the sum of $1,020, the amount for which the house should rent. Carrying the theory to its extreme or logical conclusion, (and again disregarding taxes) no rent whatsoever should be charged for the third house because it did not cost the owner anything.

ANY discussion of the relative merits of the prudent investment theory, as understood by courts and commissions, and the prudent investment theory, as interpreted by the political leaders, is beyond the scope of this article. The original theory

How the Utility Stockholder May "Make 3,000 Per Cent Profit"

"How much must be invested and how much borrowed under the conditions of the problem to enable the stockholders to earn a profit of 3,000 per cent? Our formula shows us that an investment of about $670 would accomplish this apparent miracle. The amount borrowed would be about $997,270."

and its modification are thus illustrated in order that the difference between them may be thoroughly understood. Only by knowledge of this difference can statements of commissions that they have allowed electrical companies to earn only from 7 to 8 per cent possibly be harmonized with statements of political leaders that stockholders have been able to obtain profits of from 100 to 3,000 per cent on the money they have actually invested.

When this difference between the original prudent investment theory and its refinement is appreciated, however, we begin to get a little light on the enormous "power trust" profit puzzle. This must be the key to the solution.

Assume that an electric light plant cost $2,000,000 and that a state commission establishes rates which will produce a return of 7 per cent on that $2,000,000. This would be $140,000 annually. If the stockholders put their own money into the property, their dividend or profit rate would be 7 per cent. That is plain enough. But assume that instead of putting in $2,000,000 themselves, the stockholders invested only $1,000,000 and borrowed the rest at 5 per cent. This would give them 9 per cent on their equity; in other words, 9 per cent on the $1,000,000 which they had put into the property out of their own pockets. This would be made up by the 7 per cent return allowed by the commission and the 2 per cent profit made on the borrowed money which, it may be assumed, was obtained through a bond issue. The bondholders, no doubt, would be willing to loan this amount at the lower rate of interest because of their greater security. Their risk of loss would be less than that of the stockholders.

It will be seen that on this basis any

percentage of profit can be made provided the entire investment yields 7 per cent and provided the stockholders can borrow as much money as they want, at 5 per cent. That should be apparent to anyone. Now if it costs $1,000,000 to build an electric plant and a state commission allows a 7 per cent return on it and any amount of money can be borrowed on bonds at 5 per cent, how much would the stockholders have to invest to make

(1) A profit of 100 per cent?
(2) A profit of 1,000 per cent?
(3) A profit of 3,000 per cent?

If you are interested in that problem, this little formula will be helpful:

$$X = \frac{R - Ci}{p - i} *$$

The reader can use a slide rule on this if he wishes. It will be accurate enough for practical purposes.

PUTTING the formula to work we find that under the conditions of the problem all that the stockholders would have to do to make 100 per cent profit would be to invest about $21,100 and borrow $978,900.

Now, how much would they have to invest and how much would they have to borrow in order to make 1,000 per cent profit? Applying the formula we find that this 1,000 per cent profit could be made on an investment of about $2,010, and by borrowing an additional $997,990.

The final question is, how much must be invested and how much borrowed under the conditions of the problem to enable the stockholders to earn a profit of 3,000 per cent? Our formula shows us that an investment of about $670 would accomplish this apparent miracle. The amount borrowed would be about $997,270.

This, of course, could be carried still further. By the aid of our formula we find, for example, that on the same basis stockholders might make a profit of 15,000 per cent if they should invest $134 and borrow $999,866, in spite of the fact that a commission allows only 7 per cent return on the total amount of the investment by the bondholders and the stockholders. This is carrying our investigation as far as necessary, as a 15,000 per cent annual profit should satisfy any reasonable longing of a utility stockholder to get rich quickly.

FROM a practical standpoint it may appear to a layman that the only fly in the ointment might be the difficulty of obtaining the necessary amount of borrowed money, especially where commissions have some rather definite ideas as to the proper proportions of stocks and bonds. Saying that these enormous percentages of profits are possible may be like saying that all one has to do to catch a bird is to creep up to it and carefully sprinkle a little salt on its tail. When you hear political leaders talking about from 100 to 3,000 per cent as a profit, just remember it is the bird's tail.

* X = Amount invested by stockholders
R = Total amount of return allowed by commission
C = Total capital cost or prudent investment
i = Rate on borrowed money
p = Rate of stockholders' profit

The Forward March of Regulation

The outstanding decisions of the past year in the field of the electrical utilities

PART I

BY ELLSWORTH NICHOLS

UTILITY problems settled by state commissions range from huge consolidations to the radio preferences of a single customer. The radio problem arose when the fondness for the old set by a woman in New York made trouble for an electric utility and the commission—and made new regulatory law.

The company was replacing or remodeling direct current appliances so that alternating current could be used, when one customer objected to losing the use of her old radio set. The commission settled the matter by approving an offer by the utility to contribute a reasonable sum towards the purchase of a new radio, to substitute a different model set operating on alternating current, or to award a reasonable cash sum as damages in changing over the radio set from direct to alternating current in the same model.[1]

This is one of the many controversies disposed of by the commissions in a year of what is popularly—or unpopularly—known as a depression year, but a year in which there has been no stagnation in the business of regulation. Decisions have been so numerous that in a brief space we can review but a few.

RETURNING to the matter of changing from direct to alternating current, we find that the courts and commissions sanction changes to direct current service. Thus in New York it is held that there is no statutory specification of the character or type of electric current to be furnished, nor any regulation of the public service commission, nor any common-law obligation, which imposes upon an electric company the duty to render direct current service rather than alternating current service. Nor does it constitute discrimination for an electrical utility engaged in substituting alternating for direct current in certain city areas to refuse to render service to new or rebuilt structures on a direct current basis, where all such applicants for service are likewise required to take alternating service.[2]

[1] Wright *v.* Brooklyn Edison Co. (N. Y. 1931) P.U.R.1932A, 225.

[2] Earl Carroll Realty Corp. *v.* New York Edison Co. 141 Misc. 266, P.U.R.1931E, 297.

An electric company which assumes the responsibility of replacing or rewiring consumers' electrical equipment upon a changeover from direct to alternating current cannot refuse to make such change in equipment on the ground that a customer does not own and use certain appliances, unless satisfactory evidence is produced on the question of ownership and use, notwithstanding the fact that the customer has not permitted inspection of his appliances at all times and has not responded to the company's methods and practices in reporting his equipment; and in cases where the company's inspectors are not permitted to call without notice to make a survey, it should use other methods instead of refusing to replace or rewire equipment.[3]

Further, in connection with customer's service equipment, the Wisconsin commission held that it is unreasonably discriminatory for a utility to determine the price for which installed substation equipment should be sold to a customer transferring from secondary to primary service on any basis other than what would be followed in determining the fair value of the property for rate-making purposes.[4]

RURAL electrification is an objective of the utilities, a hope of the farmer, and a byword of the politician, while the commission must determine when rural extensions should be ordered and what are fair and just terms. Contributions by prospective customers, excess mileage charges, and refunds upon the connection of new customers are involved.[5]

The Indiana commission refused to approve a rule specifying a maximum beyond which an electrical utility should not go in fixing charges for the facilities furnished and the labor of installation for rural extensions, in view of the fact that such matters could be handled better by a contract between the utility and the prospective patron.[6] Such contracts are common, and in their interpretation doubts and ambiguities must be construed in favor of the consumer, when they are drawn by the utility company.[7]

In the matter of refunds, it has been held that when a customer has contributed towards line construction under an agreement that he shall have a refund for each new customer connected on the excess part of the line, he is entitled to a refund for each new consumer who receives power over the line whether directly connected or connected through a lateral line.[8] Then, too, an electric utility cannot avoid the duty to refund contributions because of the inadequacy of its rates, since this would involve the assumption that other customers receive unlawfully preferential rates.[9] The amount paid by prospective customers along a rural extension to contractors, less the estimated cost of interior wiring and fixtures should be

[3] *Re* Brooklyn Edison Co. (N. Y. 1931) P.U.R.1932A, 337.

[4] *Re* Wisconsin Gas & E. Co. (Wis.) P.U.R. 1931E, 50.

[5] Shades *v.* Maryville Electric Light & Power Co. (Mo.) P.U.R.1932B, 364; *Re* New York State Electric & Gas Corp. (N. Y. 1931) P.U.R.1932A, 231; Harvey *v.* Interstate Light & P. Co. (Wis.) P.U.R.1931E, 47.

[6] *Re* Tri-County Power Corp. (Ind.) P.U.R.1931E, 351.

[7] Meyer *v.* Southwestern Gas & E. Co. 16 La. App. 472, P.U.R.1931D, 484.

[8] Ibid.

[9] Harvey *v.* Interstate Light & P. Co. (Wis.) P.U.R.1931E, 47.

accepted as the amount contributed by customers, it has been ruled. This plan was preferred to taking an amount determined by deducting payments by the company to contractors and the cost of transformers and other auxiliary equipment furnished by the utility from an appraisal figure which includes no allowance for overheads but includes an allowance for promotional expense.[10]

THE Wisconsin commission was of the opinion that contractors for the building of rural extensions in territory exclusively served by a certain utility, and who had made arrangements for the utility to furnish service to the customers connected with the extensions, were acting as agents for the utility in soliciting customers and building lines. The utility was legally liable to refund to such customers their contributions towards construction before placing them upon a company-financed basis of rates. Where contributions were in no way related to the length or cost of the particular part of the extension necessary to serve certain customers, it was deemed advisable, in order to eliminate discrimination between such customers, to place them all upon a company-financed rate when refunding their individual contributions, without allowing to them any choice of remaining under the former rate.[11]

A village which has helped financially in the construction of a transmission line and distribution system from the main line of a power company, according to a ruling in North Dakota, has the right to insist that service from such system should not be extended to individuals who are located outside of its corporate limits unless these individuals pay to the village a portion of the cost which is paid by the village to the power company, such portion to be computed with regard to the assessed valuation of all property involved.[12]

UPON the discontinuance, because of rerouting, of the use of an interurban transmission line passing over the property of two customers, under a right-of-way agreement, such customers were required to pay for further service in event the line would be maintained for their special benefit at rates applicable to all rural customers, which were based somewhat upon the investment necessary to furnish special service, notwithstanding alleged contractual rights of such customers to have the former type of service continued.[13]

[10] Young *v.* Davis Mill & Electric Co. (Wis.) P.U.R.1932A, 478.

[11] Ibid.

[12] Dix *v.* Otter Tail Power Co. (N. D.) P.U.R.1931D, 384.

[13] *Re* Missouri Electric Power Co. (Mo.) P.U.R.1931C, 469.

¶ *"IN New York it is held that there is no statutory specification of the character or type of electric current to be furnished, nor any regulation of the public service commission, nor any common-law obligation, which imposes upon an electric company the duty to render direct current service rather than alternating current service."*

A PUBLIC utility is still allowed discretionary powers in service matters, notwithstanding regulatory powers of commissions. Accordingly, in the absence of evidence showing that the type of meter employed by an electrical company was unsafe or unable to measure current fairly, the New York commission refused to interfere with such discretion to the extent of specifying the type of meter which should be employed in particular installations, and a customer's demand for a different type of meter than that installed was accordingly denied.[14] Then, too, it has been said that the jurisdiction of the commission in the matter of standby or breakdown service is limited to the requirement of adequate and sufficient service, but the kind of facilities employed or the methods used to take care of such emergencies rests with the utility's management.[15]

ELECTRIC utilities in most states have the right to sell appliances, and in Kansas and Oklahoma, where laws have been passed prohibiting merchandising by utilities, there are complaints that chain and mail order houses have taken over the bulk of the business and that newspapers are suffering from loss of advertising. The local merchants do not find the law as beneficial as they had hoped. In Texas an antimerchandising law has been proposed, and one company has been enjoined from selling merchandise on the ground that its charter to furnish utility service gave it no right to sell merchandise. An appeal from this decision has been taken.[16]

The New York commission has ruled that the right of electric corporations and gas and electric corporations to deal in electric appliances is not open to question under New York laws. The powers of the commission in the regulation of public utilities may not be exercised to prohibit a practice, such as merchandising, which is otherwise legal, unless such practice results inevitably in a violation of some provision of the Public Service Commission Law.[17]

But the New York commission, like other commissions which have considered this subject, was of the opinion that an accounting system for merchandising should be undertaken; and it also ruled that separate bills should be rendered for appliances or any service other than electric, since in no other way would it be made clearly to appear that merchandising is a separate operation from the distribution and sale of electricity. It was said that a public service corporation has no right to discontinue service because merchandising bills are not paid.[18]

The commission in the same proceedings said that there was no objection to, but on the contrary certain advantage in, the organization of a subsidiary or affiliated corporation to conduct the merchandising business.

An electric utility in Michigan was not permitted to capitalize the value of service entrances, in view of the

[14] *Re* Brooklyn Edison Co. (N. Y.) P.U.R. 1931E, 418.

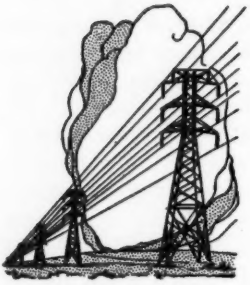
[15] Atlas Underwear Co. *v.* Richmond (Ind.) P.U.R.1931E, 403.

[16] Texas *v.* San Antonio Pub. Service Co. (Tex. Dist. Ct.) P.U.R.1932B, 337.

[17] Luckey, Platt & Co. *v.* Central Hudson Gas & E. Corp. (N. Y.) P.U.R.1932B, 165.

[18] Ibid.

The Rights of a Village in the Transmission Line It Helped to Finance



"A VILLAGE which has helped financially in the construction of a transmission line and distribution system from the main line of a power company, according to a ruling in North Dakota, has the right to insist that service from such system should not be extended to individuals located outside of its corporate limits unless they pay to the village a portion of the cost paid by the village to the power company."

fact that this item is not a proper capital cost and should be handled as a charge against the account "merchandise and jobbing." The balance of funds collected by the utility from its customers for the construction of certain distribution lines was, likewise, deducted from the reproduction cost value of the property for rate-making purposes.[19] Both revenues and expenses from merchandising and wiring operations of an electrical utility were excluded from the estimate of operating expenses and operating revenues in a Nevada case.[20]

A CITY or individual consumer under the American plan of utility regulation may bring grievances against a public utility company before the commission for settlement, but recently there seems to have sprung up a class of trouble makers who, for their own profit; stir up litigation. The Indiana commission took a step to check such activities when it dismissed a complaint against an electric utility upon learning that there was a secret contract between the city and an individual whereby the latter, not himself a resident of the city, undertook to commence a proceeding against electric rates and to furnish at his own expense the services of lawyers and experts, in consideration of the payment to him by the city of 25 per cent of the amount saved to electrical consumers by reason of any resultant rate reduction. The commission declared the contract to be champertous and a fraud upon the public at large as well as the consumers and the taxpayers of the city.[21]

The Indiana commission in this case not only disapproved the champertous contract but pointed out the fact that the commission itself had an organized staff which would look after the interests of the public. The commissions, although possessing to some extent the features of courts, do not follow strict legal procedure and their staffs aid the public interest.

[19] *Re* Toledo Edison Co. (Mich.) P.U.R. 1931D, 491.

[20] Elko *v.* Elko Lamoille Power Co. (Nev.) P.U.R.1931C, 14.

[21] North Whitesides Co. *v.* Public Service Co. (Ind.) P.U.R.1931E, 383.

The Washington Department of Public Works has stated that it gives more weight to testimony of its own engineers than testimony of either utility or city expert witnesses, not on the theory that the former are better qualified, but because they are in a more impartial position and devote more time to the problem. They furnish basic information from which the utility and city experts may compile their exhibits.[22]

CONCERNING evidence in commission proceedings, it has been ruled that the commission in the exercise of its discretionary powers may accept or reject, in whole or in part, the opinion offered by expert witnesses as to the value of utility property. The admission, in a proceeding by a utility for authority to issue securities, of a survey as to the value of the property involved, which was based in part on findings by investigators other than the testifying witnesses, all being employees of an appraisal firm retained to value such properties, is not in contravention of the evidentiary rule against hearsay. The public service commission, moreover, has liberal discretion in passing upon the competency of evidence tendered in regulatory proceedings, and its admission of incompetent evidence is not necessarily a reversible error, although it cannot dispense with fundamental rules of evidence essential to a fair trial, and its findings must be based upon proof that would satisfy a reasonable and impartial mind. It was said that a law which empowers a commission to procure "disinterested" parties to give testimony in regulatory proceedings implies that such witnesses must be free from prejudice and pecuniary interest; whether or not witnesses ought to be disqualified because of alleged prejudice or interest is a question of fact, the burden of proof of which is upon a party alleging such disqualifications. A professional appraising concern employed to aid the commission in determining a petition for authority to issue securities, it was ruled, is not disqualified by the fact that it has previously been employed in a similar capacity by the petitioner or by companies affiliated with the petitioner.[23]

THERE has always been some difference of opinion as to the proper basis for rate making, whether it should be a particular unit of the utility's property, such as the property in a single municipality, or whether the entire operations of the company should be considered. A leading decision on this point was made by a Federal district court which sustained a commission order based upon segregated municipal units, which seems to be the basis required by the Indiana law. It was held that neither the commission nor the courts could consider any other unit for utility rate making than the municipality, as designated by the regulatory law of the state. The point was made that it would be very difficult for citizens in a particular municipality who objected to rates to make an attack upon them before the commission if they had to present a case covering the entire system.[24]

[22] Department of Public Works ex rel. Patrons *v.* Grays Harbor R. & Light Co. (Wash. 1931) P.U.R.1932A, 140.

[23] *Re* New England Power Corp. (1931) (Vt. Sup. Ct.) P.U.R.1932A, 11.

[24] Wabash Valley Electric Co. *v.* Singleton (U. S. Dist. Ct.) P.U.R.1932B, 225.

The Indiana commission, however, in the case of an electric utility which was serving seventy-six communities and adjacent territory in twenty-four counties of the state, authorized a uniform rate based upon the so-called system-wide basis, rather than upon a separate rate basis for each individual community, where there was evidence that consumers in such communities would, as a whole, be benefited from reduced rates, and that the right of individual communities to complain against discriminatory rates would be preserved.[25]

In Wisconsin, on the other hand, there is a law giving the commission authority to consider two or more municipalities as a unit "if in its opinion the public interest so requires." The Wisconsin Supreme Court, in sustaining a commission order fixing street railway fares, ruled that the commission had properly taken into consideration suburban areas outside of the city of Milwaukee. The opinion indicated, however, that there might be a distinction between street railway fares and rates of a public utility such as an electric company.[26] In so far as separate departments are concerned, the Wisconsin commission has taken the position that the operations of a utility should not be considered as a whole; that it is unfair, when both electric and water service is being rendered, to require electrical consumers to pay excessive rates in order that water users may enjoy the benefits of rates that fail to cover the full cost of service.[27]

OPTIONAL rates are still a subject of controversy. In Pennsylvania it has been ruled that an electric utility has the right to put into effect optional or alternative rates which are not discriminatory or otherwise objectionable.[28] In this case it was also said that it is not the duty of a utility to investigate the requirements of a consumer served under an optional rate schedule and to calculate which of the alternative tariffs would be cheapest and to bill him upon that basis, but that the choice between two such reasonable rates may properly be left to the consumer. Then, too, it has been held in New York that a ratepayer is not entitled to recover damages from an electric utility which offers optional rate schedules because the utility has placed the consumer upon a schedule which does not prove to be the most favorable to him.[29]

[25] *Re* Public Service Co. (Ind.) P.U.R. 1932B, 186.

[26] Milwaukee *v.* Railroad Commission (Wis. Sup. Ct.) P.U.R.1932B, 339.

[27] Colby *v.* Colby (Wis.) P.U.R.1931E, 501; *Re* Juneau (Wis.) P.U.R.1931D, 127.

[28] Spear & Co. *v.* Duquesne Light Co. (Pa.) P.U.R.1931D, 387.

[29] Silver's Lunch Stores *v.* United Electric Light & P. Co. (N. Y. City Ct.) P.U.R. 1932B, 458.

¶ "THE *Washington Department of Public Works has stated that it gives more weight to testimony of its own engineers than testimony of either utility or city expert witnesses, not on the theory that the former are better qualified, but because they are in a more impartial position and devote more time to the problem.*"

Upon the other hand, it has been stated in a Canadian decision that it is more desirable for an electric utility to obtain its required revenues from one simple understandable schedule of rates applying to all customers alike in the class served rather than to establish optional rate schedules, which tend to arouse controversy.[30]

In Indiana an electric utility was required to eliminate a commercial electric rate schedule which gave the utility an option to serve upon a billing demand measured by meter or otherwise and the company was ordered to place in effect a schedule giving the consumer the option.[31]

WHEN a public utility company is faced by competition in a part of its territory, it often finds it necessary as a business proposition to reduce rates below the point which might ordinarily be considered reasonable. Then there is likely to be criticism because its rates are not so low in other parts of its territory. Such was the case recently in California and Georgia, and in each instance the commission sustained the right of the utility to reduce rates to meet competition.[32] The California commission expressed the opinion that an electric utility, by merely meeting the rates of a competitor within certain territory in order to hold its business, does not create an unjust or unlawful discrimination as against other localities which are served by it, and, accordingly, it does not offend the statute against locality discrimination

[30] Moncton *v.* Moncton Tramways, Electricity & Gas Co. (N. B.) P.U.R.1932B, 368. See also *Re* Long Island Lighting Co. (N. Y.) P.U.R.1931D, 353 (a gas utility case).
[31] *Re* Public Service Co. (Ind.) P.U.R. 1932B, 186.

[32] Modesto Irrig. Dist. *v.* Pacific Gas & E. Co. (Cal. 1931) P.U.R.1932B, 203; *Re* Georgia Power Co. (Ga.) P.U.R.1931E, 449.

The second and concluding instalment will appear in a following number of this magazine.

Curious Items About the Utilities

AIRPLANES are being used for spotting breaks in electric power lines.

* *

RAILROADS and motor busses in Istanboul have supplanted the camels, which are now used for lugging advertising placards.

* *

TRANSPORTATION of freight by air carriers has been undertaken in Ontario, where cobalt is being flown from the mines to the railroad station 40 miles distant.

* *

THE energy of sunlight falling on a square mile of land on an average summer day in a locality such as (for example) Washington, D. C., is estimated by the U. S. Weather Bureau as about 20,000,000 horsepower hours. A new project for utilizing this inexhaustible source of power has just been submitted to the Academy of Sciences in Paris.

What Others Think

The Holding Company—a Bane and a Blessing

At this writing the committee on interstate commerce of the House of Representatives is considering a Senate bill to subject railroad holding companies to regulation of the Interstate Commerce Commission. This bill has a direct bearing upon the public utility situation. Professor William Z. Ripley, discussing this bill and its effect on the power utility situation in the New York *Times*, made some critical remarks about the electrical holding companies. He stated:

"Because so much of this business is intrastate, governmental supervision of rates and service has been predominantly local. But, more and more, electrical power is being transmitted across state lines. Of greater importance, however, as respects Federal control, is the growth of great combinations through holding companies, which pretty effectually dominate the light and power business throughout the United States. Progressively, the local companies, subject to state regulation as respects rates and service, have been sucked dry by the taking over at staff headquarters of basic matters of management which determine both cost and service. All this has been effected by the prodigious use of the holding company as a legal device.

"Tactically, in politics, this situation has been met by the holding companies—light and power, gas, pipe line, or what not—thus having denatured the local operating companies, vociferously advocating 'state,' that is to say, local, regulation. This string, by the way, has been pleasingly played upon by way of appeal for widespread popular investment. Hundreds of millions of dollars of the people's money are now in the hands of these public utility managements. In all their financial and accounting affairs they are utterly without supervision in the common interest. This public utility situation must be handled some time by subjection of these great interstate combinations to some sort of Federal oversight. Grave constitutional questions, common alike to railroad and utility holding companies, will have to be settled before the Supreme Court of the United States. It is none too soon to initiate the first test in this field. It should be applied by the railroads."

Professor Ripley points to the amazing collapse in value of holding company securities as the best evidence of their tendency toward unsound financing when left to themselves. He does not accuse the whole industry of dishonest management, as other critics of the prevailing system of regulation have done, but he does believe that the leaders of the power industry are incapable of policing themselves. He concedes that the utility situation as a whole is sound and that the sheep companies are getting unwarranted punishment because of the conduct of the goat companies. Only the Federal government can stop the leaks of abuse before they undermine the whole levee of utility credit.

Unregulated holding companies give rise to a tendency, according to Professor Ripley, towards unnecessary merger, and consequent illogical and uneconomical concentration of corporate control of utilities all over the country within the confines of our financial capital—New York city. This engine of finance must itself be controlled in the public interest.

Professor Philip Cabot of Harvard University, however, writing in *World's Work*, feels that all the current political agitation over holding companies and the power industry is mere political tactics. Professor Cabot has a good word to say for the holding company. He feels it has been misjudged. He stated:

"The holding companies in the electric power industry bulk so large in the public and political eye, and their true function has been so often misunderstood, that they must be given passing notice. They have two important, but different, functions.

Firstly, they are management organizations designed to integrate small, isolated operating units so that first-class engineering, marketing, and financial skill can be made available without raising overhead costs to a burdensome figure.

"In this field the holding companies have been so serviceable that it would hardly be an exaggeration to say that without the use of this method of integration the progress of this industry, outside of the great centers of population would have been delayed for a generation.

"The losses from such delay would have been immense. Electric power is one of the greatest labor-saving discoveries of all time; and to have delayed the spread of it over the more thinly settled parts of the country, even for a few years, would have caused a loss of billions.

"Without the use of holding companies such delay would have been inevitable."

Professor Cabot feels that the achievement of an industry should be judged with respect to the contribution which that industry has made to the progress and prosperity of the nation and people it serves. This contribution has three aspects: (1) profits to investors; (2) profits to consumers, and (3) profits to the country as a whole. There are other intangible gains, however, which are frequently overlooked. The threefold contribution measures only the economic advance attributable to an industry.

Professor Cabot then proceeds to summarize the achievements of the electrical industry in favor of its investors. He finds that about eleven billion dollars has been raised and invested at a rate of interest exceeding by about 1½ per cent the rate paid by savings banks, which he feels to be a considerable gain in view of the conditions under which the power industry operates.

On the second point, Professor Cabot contends that the expansion of gross earnings from $84,000,000 in 1902 to $2,137,000,000 in 1931 is the best evidence of a sustained and urgent demand for the commodity which this industry sells which, in turn, indicates profit to the consumer in terms of service. He finds that the domestic consumer has profited most from this expanded service through economies resulting from the substitution of electricity for hard labor, thereby releasing large sums for investment in automobiles, radios, and other merchandise. He says "far from being a class which has been discriminated against by the power companies, the domestic customers have profited more than any other class."

The nation has, of course, profited by increased national wealth of a new industry, the sustaining of thousands of citizens who are employed by it, and the higher standard of living which its service has made possible.

MR. Claudius Murchison, liberal economist, writing for *The North American Review,* however, is against the holding company. He feels that enlightened liberals in this country should strain every nerve to stop the orgy of industrial centralization for which the holding company is the symbol, and work for a revival of an individualistic policy of competitive economy. The depression, he says, should have awakened us to the futility of the mad epidemic of mergers which made "experts" denounce two great industries, textiles and bituminous coal, failing to perform their expected share of combination, as ulcerous spots in our economic organization. He states:

"In the sober aftermath, we see as a matter of record that the Titans of each particular industry who overdid the issuance of securities and the expansion of plant even more extravagantly than their smaller competitors, proved to be no better judges of the course of economic events, no better regulators of production, no stronger influences toward business stability, no better handlers of the unemployment problem. They augmented, rather than lessened, the perils of competition and aggravated, rather than alleviated, the varied tendencies to excess which always makes their appearance in prosperity. Like huge pachyderms they stand unwieldy and resourceless in depression, as they were Pollyanna-like and undiscerning in prosperity."

Speaking particularly of the utility holding companies, Mr. Murchison states:

"A form of liberalism which is designed to function permanently within a system

of capitalistic enterprise is logically compelled, therefore, to fight for the maintenance of a widely diffused competition. Are there exceptions to be made? Possibly, as in the oil fields, where the paramount consideration is that of conservation of natural resources. But in the case of the railroads, a condition of competition is not incompatible with the formation of large systems made up of trunk line and feeders, a principle explicitly recognized and provided for in the Transportation Act of 1920. In the case of the power and light utilities, the principle of regulated legal monopoly must be accepted, so far as the provision of current and gas for general business and residential purposes is concerned. But there is little reason for the application of such a principle to the provision of large scale power for industrial purposes. With approximately eighty-five per cent of the country's power and light facilities in the hands of a half dozen holding company groups, the combinations have swept far beyond the proportions prescribed by the requirements of maximum economic efficiency. In the final stages of their formation there was no important motive other than the speculative and political gain from the welding process itself, and no achievement other than converging the profit flows of many separate companies into a single bottle neck."

PRESIDENT Hugh White, of the Alabama Public Service Commission, concedes the necessity for the holding company, and admits that under proper control it can be made a device of great use to humanity. But he is inclined to believe, somewhat along the lines of Professor Ripley, that regulation of the holding company is absolutely imperative. Writing for the *Electrical World*, he states:

"Utility holding companies have gone along now for many years without being subject to regulation, with such exception as is negligible when the whole situation is considered. I am fully aware that there is a strong opposition among many of the utility magnates to any sort of regulation of the utility holding companies. Some of them challenge the right, either of the Federal or state government, to regulate holding companies in any particular. I shall not discuss here the legal question as to the right of the Federal or state governments to regulate them. I am frank to say, however, that I think there is no reasonable basis for the view that the Federal and state governments are without such power.

"Of this I am certain—that the loss of billions of dollars of the savings of the people invested in utility holding company securities within the last two years proves beyond question the necessity for regulation of the security issues, not only of the operating utility, but of the holding companies as well.

"The highly inflated prices of such holding company securities existing three or four years ago have melted away, under the test of real stable earning ability, like the mist before the morning sun, leaving nothing but a cheerless dampness made by the tears of those whose savings have vanished.

"If this situation is not corrected within the near future the violent injury done to the public's confidence in these investments will be reflected in a lessened confidence in the securities of the operating utilities, which constitute their very lifeblood."

—F. X. W.

HOLDING COMPANIES. By William Z. Ripley. New York *Times*. April 3, 1932.

THE UTILITY OF POWER. By Philip Cabot. *World's Work*. May, 1932.

THE HOPE FOR LIBERALISM. By Claudius Murchison. *The North American Review*. May, 1932.

UTILITY PURCHASING AND THE PUBLIC INTEREST. By Hugh White. *Electrical World*. March 26, 1932.

Who Shall Regulate Utilities in Washington—Congress or the Utilities Commission?

CERTAIN members of the House of Representatives, particularly Mr. Thomas L. Blanton (D.) of Texas, seem to fear that the District of Columbia Public Utilities Commission is not functioning in a way calculated to promote the interest of the citizens of Washington. Mr. Blanton is chiefly concerned with the recent order of the District commission which would re-

quire taxicab operators to abandon the current flat rate level of 20 cents for the city proper, a result of the intense competition in the taxicab field, and adopt meter rates which would somewhat increase the general price level to the public. Mr. Blanton feels that the action of the District commission is more designed to aid the street railways operating in Washington than the people of the city affected. Mr. Blanton also feels that the street railways have a free hand to obtain anything they please in the Capital City. Concerning the fare increases in excess of 5 cents allowed in the District, Mr. Blanton stated:

> "They were made because the public utilities commission has always, in my judgment, had more interest in looking after the welfare of these corporate powers than they have in looking after the welfare of the people."

LOCAL papers in Washington, however, have resented congressional interference with the efforts of the District commission to work out a satisfactory transit program for Washington. An editor of the Washington *Post* stated:

> "Congress enacted a law directing the public utilities commission to set up taxicab rates that are reasonable and undiscriminatory. In accordance with that statute, the commission ordered all taxicabs to install meters and to charge uniform rates prescribed by the commission. The order was tested in the District Supreme Court and upheld.
>
> "For a number of valid reasons the commission and the court decided that the present system of zone rates does not operate in the public interest.
>
> "But Representative Blanton and a few other members of the House are quite in favor of starvation wages for cab drivers and opposed to security for the public. The gentleman from Texas got through the House a resolution declaring the opposition of that body to meter rates and directing the commission to recall its order abolishing the present system of zone rates. This resolution was not considered by any committee. It was jammed through the House when only a few members were present, and the membership at large knew nothing of it.
>
> "In effect, the House has directed the public utilities commission to flout the law under which it operates. The House did not seek to change the law, but to intimidate the commission into setting aside the statute. Because the commission has refused to take note of such procedure Mr. Blanton is attempting to have the salaries of various officials cut off."

The editorial professed to see in congressional hectoring of the District commission an attempt to usurp the duties of regulation itself. It stated on this point:

> "The real issue is whether Congress or a member of Congress shall prescribe the rules under which the public utilities commission must function. If Congress doesn't like the law it may be changed at any time. But the vicious practice of a few individual Congressmen trying to bludgeon the commission into following their whims ought not to be countenanced by the House."

Meantime, notwithstanding congressional opposition, the District commission is going forward with its efforts to enforce its regulation of taxicab service at the earliest date permitted by the District of Columbia court.

—M. M.

Remarks of Thomas L. Blanton. *Congressional Record.* April 25, 1932.

EDITORIAL. Washington *Post.* April 7, 1932.

Governmental Regulation as a Factor in the Stabilization of Industry

THIS is an age when thoughtful men are critical of economic and social systems. We in the United States have seen nothing like it since the nineties when social and economic ideas were, it will be recalled, in a ferment.

Out of the well-nigh universal discussion of the current depression a number of plans for public or private control of our economic system have

been set forth with the purpose of controlling the prices, production, and distribution of goods and services in order to secure a maximum of employment, business stability, and public welfare.

Mr. Benjamin A. Javits of the New York bar has recently joined the lists of this everexpanding group of economic doctors. Mr. Javits' theory of our current troubles is not particularly complicated. He is quite sure that free, unrestrained competition is an evil which must be corrected if the appalling wastes of industry are to be avoided. He notices that the Federal government is no longer committed to the policy of maintaining and enforcing competition, fair or unfair, at all costs.

Certain competitive practices, since the passage of the Clayton Antitrust Act of 1914, have been unlawful. At that time labor and agricultural organizations were exempted from the provisions of the Federal antitrust laws. During the past decade or so, such laws as the Webb Export Act (1918), the Packers and Stockyards Act (1921), the Capper-Volstead Act (1922), and the Coöperative Marketing Act (1926) have placed limitations upon unrestricted competition.

The author then goes on to insist that reasonable restraints on competition are in the public interest. Such are held to be valid because unrestrained competition leads to combination, because unrestrained competition destroys legitimate profits, and because unrestrained competition is destroying the small business man.

Our economic ills may be cured, it is claimed, only through an extension in the use of trade associations. The author's views in this regard are well summarized in the following excerpt:

> "In the trade associations, as already organized—in some cases to a high degree of practicability, in others to a lesser degree—there exists at the present moment the basic structure of an industrial order that gives promise of the economic salvation of America.
>
> "The present-day view, accepted by the best brains of business and endorsed by the most progressive of the American courts, sanctions their principle and program."

These ideas are made more definite in a "New Trade Association Plan" the chief features of which are (1) the adoption by each trade association of a uniform cost accounting system, (2) the agreement by each member of the association to set aside an agreed percentage of net profits for the benefit of its employees (to increase wages, shorten hours, or guarantee regularity of employment), (3) the payment by each member of a certain percentage of gross sales to the trade association for research, standardization, and cost reduction, (4) the adoption of a binding agreement among members not to sell below cost, (5) the enforcement of trade practice rules or codes of ethics, (6) the establishment of an arbitration board with power to enforce trade practice rules and codes of ethics or other agreements in the "public interest," and (7) no coercion to induce individuals to join or remain in the association, although, during the period of membership, the association will have substantial regulatory power over the business practices of its members.

These proposals are defended on the grounds that the trade association will collect group statistics and publish the information, prevent overproduction and allocate production quotas, secure the stabilization of prices and employment, and assist in better group financing.

One suspects that Mr. Javits has in mind the experience of the public utilities as a guide to his enthusiasm for coöperation. The point is emphasized that the utilities constitute the most successful business division in the country, and their success is traced largely to the willingness of their management to improve service, lower prices to consumers, and coöperate as an industry.

It seems to me that this analysis either omits or minimizes two factors of vital importance in the favorable utility situation; one is that utility services are necessities to our every-day living and

cannot be dispensed with easily, and the other is that utility rates, services, accounts, financing, competition, and combinations are controlled more or less effectively by government agencies.

Some of these conclusions will be readily accepted by those who understand our existing industrial chaos. Industry is sick, unemployment has reached a dangerously high level, profits are inequitably distributed, unrestrained competition has led to unwise extension of plant facilities in most of the major industries, and a *laissez faire* attitude is no longer sufficient to guide the destinies of our economic machine.

Whether we ought to permit unregulated trade associations to assume mandatory power over their members is, however, open to considerable question. Where problems of monopoly or semi-monopoly control of prices and production are involved and where a liberal interpretation of the antitrust laws is contemplated, close supervision by government must of necessity be recognized. We have only to observe the history of public utility regulation to be convinced on this point.

THE author purports to be speaking in the interest of the bulk of American business men. It is important to inquire whether he fully realizes the logical conclusions to which his proposals must necessarily lead. The widespread use of trade associations to control competitive practices and to achieve the stabilization of prices, production, and employment would spell the end of speculative profits. Business men might have to be satisfied with reasonable profits or possibly none at all. For a time they might enjoy monopoly profits but eventually they would be compelled by the government to exchange their economic freedom for economic stability. As one eminent observer recently declared, "This amounts, in fact, to the abandonment, finally, of *laissez faire*. It amounts, practically, to the abolition of 'business.'"

Other features of the book which will interest those concerned with the public aspects of industry are the discussion and criticisms of the Swope plan, an analysis of profits, a survey of the relation of government to business particularly under the operation of the antitrust laws and the Federal Trade Commission, and a recognition of the world-wide trend towards industrial planning on a national scale.

—RALPH L. DEWEY
The Ohio State University

BUSINESS AND THE PUBLIC INTEREST. By Benjamin A. Javits. New York City: The Macmillan Company. 1932. 304 pages. $2.50.

How the Holding Company Should and Should Not Be Regulated

"THE Holding Company," by Professor James C. Bonbright and Gardiner C. Means, of Columbia University, has as a subtitle "Its Public Significance and Its Regulation." If regulation had been printed in italics the emphasis thereby given would not have been belied by the text. The authors are quite positive in their advocacy of regulation. They frankly declare this study of the American holding company to be the outgrowth of their special interest in the regulation of public utilities.

The book has achieved the distinction of being placed by Professor William Z. Ripley of Harvard, first in his enumeration of disquieting influences upon the tranquility of the holding company. Apparently he regards as minor but noteworthy incidents other events to which he refers, including the deaths of Ivar Kreuger and Alfred Lowenstein, the Forshay Conviction, and the

House Committee Report on public utility companies. Professor Ripley pronounces the book an authoritative treatise and a first-class performance, and readers of his "Main Street and Wall Street" will recall that his sentiments regarding the holding company coincide with those held by the late President Hadley of Yale University, who wrote, "I do not like the holding company."

The relatively small portion of the contents devoted to industry and banking is corroborative of the absorbing interest of the authors in public utility holding corporations. Their investigations in these fields are limited to a brief review of the history of this device, a glance at its conspicuous examples, and a summarization of its advantages and disadvantages.

The inclusion of a discussion of the functions performed by holding companies in fields other than that of the utilities was impelled by the realization that a clear understanding of this important element in utility evolution cannot be obtained without some knowledge of its applications and resulting special problems in connection with banking, industrial, and financial organizations. However, as pointed out in the preface of the book, in the field of the industrials one cannot reach any intelligent conclusions as to the proper place of the holding company without reference to the fundamental question of public policy on the larger issue of competition *versus* regulated monopoly. In other words, an exhaustive treatment of industrial holding companies would involve a study of the combination movement, in which economic elements and legal elements would each be carefully analyzed and weighed.

IN the final objectives economics and law are equally essential factors of any study of the holding company in any class of activity. The authors recognize this interdependence by including as an appendix a brief but excellent discussion by Mr. Maurice Mound of the New York Bar, comprising a history of suits between minority and majority stockholders. They are at pains to explain that this review of cases is presented, not primarily as a legal discussion, but rather for its illustration of the economic difficulties that may arise when one corporation is operated for the benefit of another rather than for the benefit of all its stockholders. The fact remains that the book is essentially a book by economists and that the legal elements constantly intermingling with the economic are largely confined to stark declarations of rules of law or statutory provisions, without the adequate legal discussions that satisfy the requirements of the law-trained mind, on the one hand, and provide the counterbalance to the purely economic viewpoint, on the other.

An illustration of the point is supplied by the remarks of the authors pertaining to the problem of regulating the railroad holding company on page 301 of the book:

> "We shall not discuss the constitutional aspects of the question. There is little doubt that the attorneys for some of the railway holding companies will insist, just as the public utility representatives have insisted that a holding company cannot constitutionally be regulated, since it is not of itself a public utility and since it cannot be held to be engaged in interstate commerce. The merits of this legal contention, however, must be left for treatment by the legal authorities, although it may be in point to remark here that the question as to what is good law cannot be divorced from the question of what is sound economics. If the courts are persuaded that a railroad holding company must necessarily have a very significant effect on interstate commerce and that its exemptions from regulation will go a long way toward defeating the objects of the present Transportation Act there is little doubt that their decisions will not be hampered unduly by their legal traditions."

There is a refreshing optimism about the last sentence which is perhaps characteristic of the economist's attitude towards legal hurdles.

The issue of regulation of public utility holding companies is one in respect to which Professor Bonbright has an established reputation as a specialist.

No recommendations are made as to legislation designed to regulate the use of the holding company in the banking and industrial fields. In the language of the authors, intelligent opinions here must depend on a far more thorough study than they have been able to make of the trust and banking problems. They, however, have decided and definite convictions as to the proper rôle and the regulation of those holding companies which control public utilities and railroads, and these convictions are freely expressed.

Two pages are used in presenting the case against regulation of the holding company while about seventy pages are devoted to the affirmative position. None of the familiar arguments are omitted and in the absence of what Professor Ripley terms "voluble and distinguished counsel" for the utility holding corporations the case for the negative is lost by default.

IN developing their indictment against the utility holding corporation the authors severely criticize the "wholly irrational gerrymandering of the country that has resulted from the uncontrolled expansion of rival systems of holding companies." They are aware of specific instances of capital inflation but do not undertake to cite them in view of the probability that "a comprehensive study of the practice will doubtless be included in the pending report of the Federal Trade Commission." They conclude that capital inflation of the holding company has a serious effect upon rates because "when utility properties come under the control of financially top-heavy holding companies the pressure to maintain interest and dividends on the inflated capital structure is simply irresistible." They assert that overcapitalization of the holding company has a tendency to lower service standards, because the financial structure of the holding company becomes the financial superstructure of the subsidiaries, causing the operating companies to pay excessive dividends at the expense of essential improvements and extensions of utility service.

With respect to the possible conflict of interest between investors in the subsidiary companies and the management of the holding company the authors make two recommendations:

> "The first is to be found in the enforced publicity of holding company accounts, which should be subject to a uniform accounting system similar to that which is now imposed upon utility operating companies. The second remedy lies in legislation requiring a holding company that has secured a majority stock interest in a subsidiary to buy out the minority stock at a fair appraisal."

Strong disapproval is expressed of service charges imposed by holding companies and management companies on their operating subsidiaries. The complaint is made that instead of being satisfied to receive such returns as an investor in the operating company would receive, the holding company in many instances derives a substantial, sometimes a major part of its earnings from payments made by the operating subsidiaries for various forms of service and for the purchase of commodities at prices in excess of their actual cost. In the language of the authors: "In some cases the burden of these excess costs must be assumed by the outside investors in the subsidiary utility companies who are practically powerless to prevent any such impositions unless they extend to the extreme point of absolute and obvious fraud. More often, however, they are passed on to the consumers in the form of higher rates than would otherwise be necessary to support the credit of the utility company. In either case they are a public menace and require a degree of regulation which no state has yet been able to secure."

The advantages and disadvantages of different types of utility regulation are discussed, including unification of competing and adjacent properties, centralized control of widely scattered properties, combinations of two or more types of utilities serving the same territory, and combination of utility enterprises with nonutility enterprises.

IN their discussion of existing and proposed regulation, the authors make free use of an exhaustive study of the legal status of the utility holding company by Mr. David E. Lilienthal in the *Columbia Law Review*. It is apparent that attempts at direct regulation of the holding company have not been successful. The Illinois and Ohio courts have ruled that a holding company even though it may have a voting control over the affairs of an operating utility does not come within the provisions of a statute which applies in express terms to "public utilities." Nor does the doctrine of disregarding the entity offer a method of bringing a foreign holding company under the jurisdiction of the state commissions. As recently discussed by Mr. Lowell M. Greenlaw, general attorney of the Pullman Company, the tendency to pierce the veil "will be strictly limited to cases where the parent concern directly operates the subsidiary."

Indirect regulation of the holding company by public service commissions has been partially accomplished by restricting the purchase of utility stocks by holding companies. An instance of such a restriction is observed in the Massachusetts statute directing that no foreign corporation owning a majority of the capital stock of any domestic street railway, gas, or electric company may issue stocks or bonds based upon the property of the domestic utility unless such issue has been specially authorized by the laws of Massachusetts. In the case of Indiana, Missouri, Illinois, New Jersey, New York, and the District of Columbia, the restriction takes the form of a requirement that a holding company must first secure the approval of the public service commission before it may acquire more than a limited percentage, usually 10 per cent, of the stock of an operating utility corporation.

Under such statutes it is a moot question as to whether the law requires the commission to approve the purchase unless it finds it to be actually detrimental to public interest. The authors regard as highly tentative the propositions that the commissions are influenced (1) by the consideration of maximum efficiency of physical operations, (2) by the reasonableness of the price which a purchasing company proposes to pay either for the assets or for the stock control of the vendor company, (3) by a top-heavy financial structure of the holding company. The conclusion is reached that indirect attempts to regulate holding companies by a statute requiring the approval of the public service commission to the holding company's acquisition of shares of an operating company are ineffective.

REFERRING to the bill recently submitted by Senator Couzens to the United States Senate, providing for the regulation of interstate transmission of electricity and for a limited regulation of those holding companies which control properties engaged in interstate transmission of power the authors remark:

> "In our opinion, the Couzens Bill, in providing for Federal control over interstate holding companies, offers the only practical solution of the problem of regulation. The bill is applicable, however, only to holding companies which control properties transmitting or distributing current across state lines. It would not apply to a holding company controlling properties in more than one state, so long as there is no interstate transmission or distribution of current. In fact, it is more than doubtful whether the latter type of holding company could constitutionally be subjected to Federal regulation, at least under the prevailing interpretations of the Interstate Commerce Clause of the Federal Constitution."

Regulation of holding companies has been the subject of endless discussion. It involves legal, financial, and even engineering elements as well as economic. It should be approached by the scientific method, and not with the spirit of the crusader. An ideal group to investigate the shortcomings of utility holding company operations would be one comprised of members of each of these professions. It would coolly and impartially examine all aspects of each issue or proposal. Its recommendations

would certainly not embody hasty or radical measures. It would not urge unconstitutional procedures to accomplish economic changes of doubtful benefit. It would not scrap proven values purely for regulation's sake without securing compensatory advantages. It would weigh the immediate, the near-distant, and the far-distant consequences of contemplated changes, from every standpoint.

—WILLIAM H. CROW

THE HOLDING COMPANY. Its Public Significance and Its Regulation. By James C. Bonbright, Professor of Finance, Columbia University, and Gardiner C. Means, Columbia University. New York. McGraw-Hill Book Company, Inc. $4.00. 1932.

The Utterances of Congress About the Utilities

In the Senate

STABILITY OF UTILITY EARNINGS

IN the course of remarks by Mr. Couzens (R.) of Michigan upon the subject of increased taxation of incomes, Mr. Walsh (D.) of Montana pointed out the sustained earning power of public utilities as indicating the continued existence of higher taxable incomes in the United States. Mr. Walsh inferred that these public utilities' rates had remained "exactly the same as they were in 1929 and 1930" but that the expenses had diminished since that time. (*May 13, 1932.*)

In the House of Representatives

WASHINGTON RAILWAYS

AFTER some debate on the proposed bill authorizing a merger of street railways in the District of Columbia, Mr. Blanton (D.) of Texas moved that the bill be recommitted for further study and possible amendment to the committee on the District of Columbia. The motion was defeated by a vote of 100 to 192, with 140 not voting. Following the recording of the vote on Mr. Blanton's motion the bill was passed by a *viva voce* vote, and a motion to reconsider the vote by which the bill was passed was laid on the table. (*May 9, 1932.*)

BUS REGULATION

MR. Brand (R.) of Ohio obtained leave to have published in the appendix of the *Record* correspondence between himself and the Hon. W. R. Atterbury, president of the Pennsylvania Railroad Company, relative to the proposed regulation of interstate trucks, busses, and water craft. (*May 9, 1932.*)

LOANS TO THE RAILROADS

MR. Celler (D.) of New York in extending his remarks in the *Record* criticized the conduct of the Interstate Commerce Commission in approving loans by the Reconstruction Finance Corporation to railroad companies. (*May 17, 1932.*)

Other Articles Worth Reading

CHAOS OR CONTROL. By George Soule. *The New Republic.* April 6, 1932.
The last of a series of five articles condensed from a forthcoming book, entitled "A Planned Society," by George Soule.

FINANCIAL MANAGEMENT OF PUBLIC UTILITIES. By William H. Crow. *Corporate Practice Review.* March, 1932.

MOTOR TRANSPORT: The Question of Regulation. By Edward M. Barrows. *Review of Reviews.* May, 1932.

OUR TAXES: The Bills We Pay for Politics. By C. T. Revere. *Review of Reviews.* May, 1932.

THE ELECTRICAL APPLIANCE CONTROVERSY. By William H. Hodge. *Industrial News Review.* March, 1932.

THE HOLDING COMPANY AND ITS EFFECT UPON LABOR. By William Z. Ripley. *The American Federationalist.* May, 1932.

THE UTILITY OF POWER. By Philip Cabot, Professor of Public Utility Management, Harvard University. *World's Work.* May, 1932.

VALUATIONS GUIDE COMMISSION REGULATION. By Henry B. Shaw, Chairman Vermont Public Service Commission. *Electrical World.* April 9, 1932.

The March of Events

Bill Would Confer Rate-making Powers on Federal Power Commission

A BILL has been introduced in the Senate by Senator George B. Norris to amend the Federal Water Power Act by providing that it shall be unlawful for holders of water-power licenses or corporations engaged in sending or receiving electricity across a state boundary, or their affiliates, to sell or offer for sale electricity in one community at rates higher than the rates at which electric energy is sold or offered for sale in another community by the seller, or person affiliated with the seller, unless there is a difference in the cost. It is also provided that the rates in the community having the higher cost shall not exceed the rates for a like service in the community having the lower cost by a greater percentage than the percentage difference in the cost. Jurisdiction to enforce these provisions would be conferred upon the Federal Power Commission, which, after investigation on complaint, or on its own initiative, would have power to fix the rates thereafter to be charged.

There is a provision in the bill stipulating that when the seller of energy may be experiencing in any community the competition of a municipal corporation engaged in selling electricity to the public at rates insufficient to meet the cost of service, the rates in that community shall not be taken into consideration in determining the lawfulness or unlawfulness of rates charged elsewhere.

Different rates for a like service would be deemed prima facie evidence of a violation of the law, and the burden of proof would be placed upon the seller to prove when rates are different in two localities that the difference does not tend unduly to prejudice or unjustly to burden interstate commerce, and to prove the actual difference and the percentage difference in cost which it may allege exists in furnishing a like electrical service in different communities. Other provisions relate to sale of property used in the business of distributing electricity, penalties, and definitions, including the definition of cost. The following provisions are contained:

"(B) In determining the cost to deliver electrical energy in any community the property of the seller or any person affiliated with the seller alleged to be used and useful in delivering electrical service to that community shall be properly allocated to that community and to it shall be assigned a value properly allocated from the aggregate total value of the property of the seller and person affiliated with the seller returned for rate-making purposes to the state agency, if any, having jurisdiction over its rates in the state in which said community is located, or from the aggregate total book value of said property in said state if no such agency exists therein.

"(C) The cost to a municipal corporation to deliver electrical energy to the public shall be deemed to include its expenses in operating and maintaining and the interest accrued on, and a reasonable sum (as defined in paragraph (D)) for expected depreciation on, that part of the investment and property of said municipal corporation used in so delivering electrical energy, and in addition a sum equal to the accrued tax that could be properly assessed thereon by said municipal corporation had the same been owned by the seller.

"(D) The reasonable annual sum for expected depreciation shall be deemed to be that sum which, if invested semiannually in the bonds of the said municipal corporation at market prices, would yield a sum sufficient to enable the said municipal corporation to replace at the expiration of their respective lives the several parts and elements of its said property used in furnishing electrical energy to the public."

Competition by Government with Business Is to Be Studied

A RESOLUTION has been introduced in Congress by Representative Shannon of Kansas City, Missouri, calling for an investigation of governmental competition with private enterprise. Quoting from the *United States Daily:*

"The resolution states that 'protests against the entrance of government into business in direct and unfair competition with its citizens are being received from communities throughout the nation,' and that, due to the present depressed economic conditions, 'there exists an immediate necessity for the curtailment of the tendency of the government to engage in business in competition with private enterprise, and for the withdrawal by the government from many of the fields in which such competition also exists.'

"Such competitive business activities on the

part of the government may be abolished or restricted without impairing the necessary and orderly functions of government, the report states, citing a number of protests which have been received relative to the 'disastrous effects on private business of government competition.'"

State Tax on Electricity Upheld by Supreme Court.

THE Supreme Court of the United States on May 16th unanimously affirmed a decision of the Federal District Court of Idaho in the case of Utah Power & Light Co. *v.* Pfost, which upheld a tax imposed by the state of Idaho on the production of electricity.

The power company contended that the tax was not one on manufacture or production or on the extraction of a produce of nature, but on the transfer or conveyance of energy in nature from its source to its place of use, and that much of the energy generated in the state of Idaho is transmitted in interstate commerce. The point was emphasized that electricity is not stored in advance but produced as called for.

The court was of the opinion that the process "by which the mechanical energy of falling water is converted into electrical energy, despite its hidden character, is no less real than the conversion of wheat into flour at the mill." The court believed it to be wholly inaccurate to say that the company's entire system was purely a transferring device, stating in part:

"We are satisfied, upon a consideration of the whole case, that the process of generation is as essentially local as though electrical energy were a physical thing; and to that situation we must apply, as controlling, the general rule that commerce does not begin until manufacture is finished, and hence the commerce clause of the Constitution does not prevent the state from exercising exclusive control over the manufacture."

A section of the law granting exemption from the tax to electrical energy used for pumping water for irrigation purposes was sustained with the statement that the irrigation of even private lands in the arid region is a matter of public concern and that an exemption of this character is not precluded by the equal protection clause of the Fourteenth Amendment.

It was further held that the limitation of the tax to electric energy generated only for barter, sale, or exchange obviously required that in determining the amount so generated there should be excluded from the computation all electric energy generated for other purposes, including that generated for the company's own use. This ruling was in answer to a contention by the company that the act was so uncertain and ambiguous as to require arbitrary administrative action, in that it could not be determined whether the tax was levied on all energy generated or only on such as was produced for the purpose of sale.

Arizona

Obstacles to Rate Reduction Are Stated

THE city of Winslow was expected to carry its fight for lower electric rates before the corporation commission, according to the Winslow *Mail*. Recommendations were made to council by a citizens' committee recently appointed to confer with power company officials. The recommendations included placing the city's demand before the commission; providing funds to engage a competent surveying engineer; providing funds for employment of a special attorney to fight the city's case.

G. T. Herrington, representing the power company, informed the committee that a decision on a rate reduction was being delayed by uncertainties because of a rapid decline in sales of electricity since the first of the year and the threat of an excise tax by the Federal government. It was said to be possible that the company could not reach a decision until the tax matter was settled and there was some evidence that declining sales had reached some lower limit upon which revenue estimates could be based. He stated that operating costs showed no indication of lowering in anything like a proportionate amount nor was it likely that they could be lowered without a further reduction in labor costs. He declared that such wage reductions were undesirable.

Rate Reductions by Conference to Be Sought

CONFERENCES of public utility companies and corporations in the state with the corporation commission for the purpose of discussing reductions in rates have been planned by the commission, according to an announcement by Commissioner Loren Vaughn, reported in the Phoenix *Republic*, which adds:

"The announcement followed adoption of

a resolution by the commission directing that such meetings be held at the earliest convenient time so that such reductions as are possible may be made soon. Mr. Vaughn introduced the resolution calling for the discussions of rates for public utilities.

"Dates for the meetings will be fixed later, Mr. Vaughn said, and notices sent to all companies, persons, and corporations serving the general public in the state.

"The resolution points out that the public is complaining of rates charged for services rendered by public utility corporations and that many of the rates now in effect were fixed at a time when prices of commodities were on a higher level than at present.

"The document also advises that the charges so determined and fixed at that time were presumed to be reasonable. It further advises that the commission in recent years has not been provided with funds by the legislature to make valuations of the properties of the public utilities upon which rate reductions could be based, nor has it had the funds to make investigations necessary to determine whether the charges could be lowered.

"The commission further declares that the expense of forced valuations at this time or the taking of inventories for rate-making purposes are almost, if not entirely, prohibitive."

California

Strike on Street Lights Proposed to Force Lower Rates

THE Anderson Chamber of Commerce, according to the Redding *Searchlight*, has instructed Supervisor J. C. Hawes not to sign a new lighting agreement with the Pacific Gas and Electric Company until a new schedule of rates satisfactory to the town has been approved. The light committee, in a resolution, was instructed to lower the rates or turn off the lights until a satisfactory agreement could be reached.

The town is said to be paying at present $81.20 a month for practically the same number of lights as were in use in 1915, when the monthly charge was $46.20. It has been computed that if the current were run through a meter the rate would be around $50 a month.

Rate Complaint Is Move toward Municipal Ownership

THE first attack in what is expected to be a protracted battle to win municipal ownership of the Coronado water system, says the San Diego *Union* has been made in the city council. Mayor A. B. Fry presented a letter from P. D. Rice, resident manager of the water company, in which a request for a lower water rate was denied. The letter stated that no reduction could be made until new and cheaper sources of supply were developed.

It was said that the water company had always been willing to coöperate with the city. Reference was made to fire hydrants, mains, and pressure pumps recently installed at no cost to the city as an illustration. The mayor, in reply, said that as long as he could remember, the only way the city has been able to get any improvements in service or in the character of the water was by the insistence of citizens. The *Union* continues with the statement:

"Mayor Fry completed his harangue with a request to make inquiries of the state railroad commission.

"'There are two things I would like to know,' he said. 'What are the possibilities of an investigation into the valuation of the city water company? And, would there be any charge for the investigation?'

"The questions were made into the form of a motion by Councilman A. H. S. Black but were tabled without a vote. Councilman Stanley Woodman and E. A. Ingram, superintendent of operation, defended the present rate. Both referred to an agreement with the water company four years ago.

"Railroad commission experts, after investigation, allowed the water company a rate of 43 cents per thousand gallons, they said. Water officials, however, fearing that such a high rate would be detrimental to city growth, allowed the 37-cent rate and set a higher rate on fire hydrants, the pair stated.

"At the close of the meeting, Mayor Fry indicated that he would attempt no further action until El Capitan dam construction was well under way."

The mayor is quoted as saying that the moves being made are merely advance steps in what "we hope will eventually bring about a municipally owned water system."

Connecticut

Order Raising Rates, Changing Contract, and Barring Free Use May Be Appealed

CITY and town officials have expressed their disagreement with the order of the commission which recently increased rates of the New Haven Water Company for the city of New Haven and surrounding towns, and they have indicated that an appeal to the courts from the commission order would be made. The commission granted a rate increase which is said to amount to 51 per cent in New Haven and 35 per cent in the towns. The commission found that the former rates discriminated in favor of the municipality.

One of the features of the report to which the city of New Haven objects particularly is the discarding of the city's contract with the water company, made in 1902, and the ordering of the city to pay for water used in fire protection and for all municipal purposes. Owners of sprinkler systems, which were exempt from charge under the old rates, must also pay for their service.

Gourdin Y. Gaillard, president of the New Haven Water Company, according to a statement published in the New Haven *Journal-Courier*, said that the company had been operating in New Haven under a schedule of rates fixed by contract in 1902, since which time the company has made many large and expensive extensions to the plant and equipment and had taken pains to protect the water supply from contamination at considerable expense. He said that the new rates would yield only about a 5 per cent return upon the book value of the company's property and only about 3 per cent on the appraised value.

Mayor John W. Murphy of New Haven is quoted in the New Haven *Times* as declaring that the commission went too far when it assumed that under the general powers given it by the legislature it could wipe out the rate contract with the city.

District of Columbia

Commission Orders Hearing on Telephone Rates

THE public utilities commission, after a quiet investigation of telephone company profits, carried on over a period of several weeks, has ordered hearings as a preliminary step toward a reduction in rates of the Chesapeake and Potomac Telephone Company. The commission in its order states that it is satisfied that sufficient grounds exist to warrant a formal public hearing. Last year's profits, according to the Washington *Times*, were $500,000 more than for 1930.

The company has been instructed to file its present complete rate schedules, as well as statements of costs of furnishing service to the different classes of customers. There is said to be no accepted valuation of the company's properties at present. A valuation proceeding in 1925 was halted by an appeal to the courts, following which a rate compromise was attained.

Illinois

Consumers' and Investors' League Attacks Electric Rate

THE Utility Consumers' and Investors' League of Illinois has made an analysis of rates of the Public Service Company of Northern Illinois and has concluded that although the company is entitled to a return of 7 per cent, it has been earning approximately 10 per cent annually for the last four years, it is reported in the Ottawa *Republican-Times*.

The figures on earnings are included in a petition mailed to the commerce commission, in which the league asks that electric rates of the company be reduced from $2,500,000 a year for residential, commercial, and rural consumers. More than 200 communities are served by the company. The petition asks an immediate reduction in residential rates of 20 per cent, in commercial rates of 10 per cent, and in rural rates amounting to 20 per cent.

The petition asserts that the company has been earning far too much upon the basis of a fair valuation, and that its rates are distinctly out of line with the prevailing drop in other prices and in the incomes with which the consumers pay their bills.

Gas Company Required to Furnish Information on Rates

THE commission has ruled that counsel for the People's Gas Light & Coke Company must furnish the balance sheets and monthly operating statements of the Texoma Company and the Natural Gas Pipe Line Company of America in its gas rate case. The Texoma is the holder of the leases of the Texas fields furnishing natural gas to the metropolitan area of Chicago, and the pipe line company transports the gas from Oklahoma to Chicago. This ruling followed a spirited controversy before the commission.

The ruling by the commission is regarded by city representatives as "an entering wedge" whereby important figures on values of properties may be uncovered and whereby lower rates for consumers may result. It is said that heretofore figures on operating costs of the pipe line company and the Texoma have been furnished, but have been lumped together. Two points that the city wants developed, it is explained, are whether the $15,000,000 cost of the gas field leases carried on the books is not too high, and how much the Standard Oil Company of New Jersey paid for its 25 per cent interest in the pipe line company.

Indiana

"System Rate" Controversy Goes to Supreme Court

AN assignment of errors has been filed with the United States District Court at Indianapolis on behalf of the Wabash Valley Electric Company in its appeal from a decision in the Martinsville Rate Case. The company has requested that pending an appeal to the Supreme Court further proceedings in the Federal district court be suspended.

The company contends that the Martinsville property should not be segregated arbitrarily from the rest of its electric property for rate-making purposes on the ground that its electric facilities extending over a considerable portion of central Indiana constitute "a single physical and economic system, interconnected throughout, which supplies electric energy to the public residing in towns, cities, and communities located on that system, and every portion of that property is used and useful for furnishing service to that public."

Maryland

Emergency Relief for Street Railway Is Considered

OUT of recommendations of the Vernay committee of Baltimore for some emergency relief to the United Railways through deferred park-tax payments and out of other suggestions that have been made since the United broached its relief plan last fall, according to the Baltimore *Post*, a threefold program seems to be taking shape, although as yet vaguely.

Such a program, says this paper, might command the approval of the city council and of the city administration. The three elements under consideration are: Agreement by the United to try, if for only a limited time, some carfare reduction; agreement by the holders of the underlying and mortgage bonds to accept a reduction in the interest rate, for a specified period; and agreement by the city to lighten the park-tax burden, also for a specified time, either by the deferred payment plan or by a reduction, for the limited period determined upon, of the 9 per cent gross receipts tax or park tax.

There is said to be an appreciation in the city government of the railway's difficulties and a desire to do something to help tide the company over the present depression period, provided the company is willing to make some concession to the public and provided the security holders are willing to contribute to the relief program.

The carfare reduction experiment has been the subject of lively discussion since it was suggested by Frank A. Furst, formerly vice president of the company and still one of its large security holders. The company has taken the attitude that a carfare reduction is impracticable at this time. This also is the view taken by the Vernay committee, although the committee recognized that the 10-cent carfare may be a contributing factor towards the company's present financial depression. The committee saw in a reduction in interest paid by the company on its bonds a possible solution, but it also saw one difficulty, a fundamental one, in this plan. It would require the unanimous consent of the security holders, and that the committee regarded as impossible of attainment.

Massachusetts

Service Charges and Other Rates Attacked

ATTACKS have recently been made upon rates of the Malden Electric Company, the New Bedford Gas & Edison Light Company, and the Dedham & Hyde Park Gas Company. Rate reductions are demanded and the elimination of service charges is urged.

At a hearing before the commissioners on a motion initiated by them to investigate the dividends of the Malden Electric Company, a large number of citizens from the cities served by the company were present. They declared that the rates charged by the Malden Company were excessive, and one of the representatives declared his opinion that consumers should not pay for "the use of a meter"; that it would be the same as a butcher charging for the use of the scales in making a sale to a customer.

Corporation Counsel Silverman of Boston appeared before the commission recently, in behalf of Mayor Curley, and supported a petition of customers of the Dedham & Hyde Park Gas Company for a reduction in the $1.40 rate charged by that company. The Boston *Transcript* states:

"Mr. Silverman, in examining I. T. Haddock, vice president of the company, sought to show that the parent company, the New England Gas & Electric Association, if it chose, could bring about a reduction and that any losses which might result could come from profits made by other companies operated by it. Mr. Haddock denied that this could be done. Turning his attention to the set-up of the Dedham Company, Mr. Sullivan asked Mr. Haddock whether the president of the company was not also the president of another New England concern, to which the company's official replied in the affirmative.

"Mr. Silverman maintained that from the picture which had been developed at the hearing it was easy to understand that the New England company dominated the affairs of the Hyde Park company and could, if it so desired, bring about a reduction in price, which could be made up from the profits accruing to the parent company from more prosperous concerns owned by it. This could be done, the speaker went on, by a change in the method of selling gas to the Hyde Park company. Now it is secured from the Worcester Gas Light Company at a rate of about 70 cents a thousand cubic feet. Silverman maintained that the New England company could change the set-up so that the price paid by the Hyde Park company would be considerably lower.

"Chairman Henry C. Attwill of the department remarked, however, that legislation now on the books might prove an impediment to the suggested program of Mr. Silverman, and reminded the parties involved that years ago a similar situation affecting car riders prevailed in Hyde Park, where a double fare to Boston was charged. It was only solved by the Elevated taking over the local line, just as the present situation can only be handled by the Consolidated taking over the Hyde Park company, the chairman said."

Charles S. Hamlin, a member of the Federal Reserve Board and formerly assistant secretary to the United States Treasurer, according to the Boston *Globe*, is so "incensed" at the minimum charge imposed by the New Bedford Gas & Edison Light Company that he has applied to the commission for relief and also announces that he will fight the company in the courts if that may be necessary.

He is a summer resident at Mattapoiset and holds that a monthly minimum charge of the company of $2 for power rates and of 75 cents for lighting rates is excessive. He objects to paying $12 in minimum charges during the six months that his property is not occupied. The company suggested that he take all his electricity for lighting and power from one meter but he declined the proposition on the ground that he would then be paying as much for power as for lighting.

New Jersey

Discount for Cash in Advance Is Considered

THE Englewood Sewerage Company, according to the Englewood *Press*, is considering a voluntary reduction in rates in the form of a cash-in-advance discount in order to secure the good will of patrons and to stave off the increasing number of fixture removals, foreclosures, and general bad debts. The commission has ordered a new appraisal of the values of land and holdings of the company. The *Press*, in commenting on the rate situation, states:

"The new appraisal, which will be made

shortly, will be based upon the prices and values of today, Secretary Drew stated to the Englewood *Press* this morning, and its purpose is to determine whether or not the present sewerage rate schedule which was put into effect January, 1931, when the commission granted a 60 per cent increase, is justified by the actual values of the company's holdings.

"This action has grown out of the complaint filed by Edward H. Greene of Englewood, Mr. Drew declared. The appraisal engineers have already been in Englewood. The Englewood Sewerage Company, Mr. Drew asserted, as a public utility, is entitled to an 8 per cent return on its holdings. Last year, when the new rates were granted, the utilities commission declared that $77,000 profit (before dividends), is not an unreasonable return on a value of $1,000,000. The result of the new appraisal will be to determine any change in this $1,000,000 value, and, consequently, any change in the percentage of return."

New York

Proposed Therm Rate Assailed by Commission Witness

EXPERT testimony which sharply contradicts that offered earlier by the Syracuse Lighting Company was presented on May 4th at a hearing in the Syracuse gas rate case before the public service commission, says the Syracuse *Journal*. Willard F Hine, gas expert retained by the commission, explained an independent survey made of the Syracuse situation. He asserted that instead of losing money under the new rates, the company would secure an increase in net operating revenue. The new rates would be based on the heat value of a mixed natural and artificial gas. Similar proposals have recently been made in other states.

The witness calculated that by far the greater part of the increase in the amount paid for gas would be borne by those in the rate classification known as "residence without heat"—the ordinary householder who uses gas for a kitchen stove and water heater. The *Journal* states:

"Questions by Randall J. LaBoeuf, general counsel for the Niagara-Hudson Power Corporation, brought out the fact that some of the discrepancy between Hine's figures and those of Mr. Kimball may be due to the former's failure to include any allowance for Federal income taxes. Hine admitted he made no such allowance, because he found it impossible to segregate a proper amount chargeable to the gas division of the company's business. LaBoeuf declared the taxes would account for at least 1 per cent."

A large group of public utility leaders from all sections of the country were in the court room when the hearing opened. They are particularly interested in the fate of the proposal to make the therm or heat unit content of gas the new basis for fixing charges. The huge masses of statistics submitted in this case made it necessary to take an adjournment for three weeks to enable the lawyers to study the material.

Pennsylvania

Sales to Government and Distributors Tax Exempt but not Merchandise Revenues

A STATE is not entitled to a tax on the receipts from the sale of electricity to the United States government, according to a recent ruling by the court of common pleas of Dauphin county in a suit by the commonwealth of Pennsylvania against the Philadelphia Electric Company. The court stated:

"We think it is too plain for serious argument that the commonwealth is not entitled to the tax on the receipts from the sale of electricity to the United States government. In the great case of Western U. Teleg. Co. *v.* Kansas (1910) 216 U. S. 1, the authorities, with reference to the right of the state to a tax which may be an indirect burden on interstate commerce, were considered at great length. It is there said, *inter alia*, page 27:

"'If the statute, reasonably interpreted, either directly or by its necessary operation, burdens interstate commerce, it must be adjudged to be invalid, whatever may have been the purpose for which it was enacted.'

"The same principles apply with equal force to taxation which affects an agency of the government. It has been many times held culminating in the case of Williams *v.* Talladega (1912) 226 U. S. 404, that a state cannot indirectly tax telegraph messages of the Federal government. If the state can-

not tax the electrically transmitted messages to or from the agencies of the government, how can it tax the electricity sent to an agency of the Federal government for the purpose of light or power?

"In Panhandle Oil Co. *v.* Mississippi, ex rel. Knox (1928) 277 U. S. 218, it is held that a tax on gasoline measured at so many cents per gallon is void as applied to sales to instrumentalities of the United States. It is said, page 221:

"'The states may not burden or interfere with the exertion of national power or make it a source of revenue or take the funds raised, or tax the means used for the performance of Federal functions.'

"When it is remembered that the tax in question here is on the receipts which come directly from the electricity supplied to the agencies of the Federal government, no further discussion is necessary to demonstrate the invalidity of the tax."

The court also held that revenues from sales to other utilities paying the levy are not liable to taxation. It was said that double taxation is not unconstitutional, but that the right to it must clearly appear in the statute imposing the tax and the presumption is against double taxation unless such presumption is overcome by express words showing the contrary. An agreed statement of facts on which the case was decided showed that four of the corporations to which sales were made were affiliated with the Philadelphia Electric Company and that this company had known that the other companies had reported the sale made by them of the current in question for the purpose of taxation, and that the other companies were under obligation to report and pay the tax on the amount received by them from the resale of such current. It was said in part:

"Let us assume that the electric power in question was furnished by one of the great hydroelectric companies on the Susquehanna river by the defendant company and by the defendant company to the Pennsylvania corporations for resale.

"The power company would pay a gross receipts tax on the current, the defendant company another gross receipts tax on the same current, and the Pennsylvania corporation who furnished it to its customers would pay a third gross receipts tax on the same current. We think it would take very strong, clear language to sustain double or triple taxation inasmuch as it is a tax on the direct receipts from the sale of the same current."

The same court in another case ruled that the gross receipts tax is applicable to revenue received from the sale of articles which tend to "encourage the use of electricity." The court ordered the Philadelphia Electric Company to pay additional taxes on gross receipts, notwithstanding objections by the company that the tax could be levied only on receipts from the sale of electric current. The court ruled, however, that the tax is not applicable to revenue from sources other than those connected with the use of electricity. The court said in part:

"It would be difficult to conceive the operation of a large electric lighting and power business which did not include everything that naturally tended to encourage and increase the use of electricity. The promotion of the use of electrical fixtures and utensils certainly stimulates the electric lighting and power business.

"Therefore, the sale of lamps, lighting fixtures, electric sweepers, vacuum cleaners, and cooking utensils stimulates the business. The electric lighting business can not be transacted without wire, sockets, plugs, fuses, and switches. These articles are inseparably connected with the business."

Wisconsin

Commission Investigates Effects of Economic Conditions

THE Wisconsin Public Service Commission has undertaken an investigation of the effect of the economic depression upon the people and industry of the state, with particular reference to the bearing which these conditions may have upon the commission's duties in the regulation of public utilities. In this connection the commission has called for the views of a number of economists from various parts of the country.

Commissioner David E. Lilienthal, in announcing the hearings, stated that the commission desired to make it perfectly clear that these economic experts would appear simply as advisors to the commission and not as witnesses in the ordinary sense, and that the data which they might submit and the opinions which they might express were not in any sense to be taken as representing the commission's views on either the general problems of price relationships and other economic problems which they would discuss, nor upon issues more directly related to the regulation of rates of utilities in the state or of the issues as to rates presented in a pending rate investigation involving the Wisconsin Telephone Company.

The Latest Utility Rulings

Æsthetic Arguments for Underground Transmission Lines Outweighed by Cost

WESTCHESTER county, in the state of New York, contains a number of fashionable and beautiful communities which are considered suburbs of the metropolis. Certain property owners in these communities recently complained to the New York commission against a proposed overhead construction of transmission lines by the system of electric companies which serve the entire metropolitan and suburban areas. The complainants suggested that the transmission lines should be laid underground because overhead lines were unsightly, that they depreciated property value, and violated local municipal zoning ordinances. The commission dismissed the complaint holding that it did not have authority to enforce a municipal zone ordinance in the exercise of its powers of supervision over the construction of electrical transmission lines, but that in the exercise of this statutory supervisory power in public interest it must construe "public interest" broadly, including not only æsthetic factors as well as the effect on property values of unsightly construction, but also the effect of the proposed underground construction upon service and rates which would be felt by all the utilities' consumers, as distinguished from those residing near the lines.

In other words, merely to avoid damage to adjacent property and to satisfy æsthetic considerations, the commission refused to require the electric system to construct underground transmission lines at an increased cost to customers living in both New York city and Westchester county of $1,000,000 a year. Another reason for the dismissal of the complaint was the fact that pending rate reductions would have to be deferred if the more expensive type of construction were forced upon the utility companies involved. The opinion also pointed out that underground transmission lines in Westchester county would serve as a precedent for similar action in other parts of the state which would adversely affect the program for cheaper water power that depends on the St. Lawrence development. The opinion contained interesting discussion of the respective advantages both from a cost and from a service standpoint of overhead construction as compared with underground construction of transmission lines. *Owners & Residents of Westchester County v. Westchester Lighting Co. et al.*

A Chautauqua Is Held to Be a Public Utility

THE Pennsylvania Chautauqua, which has become widely known as the only public utility in the United States having for its charter purpose "the advancement of literary and scientific attainment among the people and the promotion of popular culture in the interests of Christianity," has apparently reached the last stage in its effort to escape the public utility status originally imposed upon it by the Pennsylvania commission. Many years ago this corporation acquired a tract of land in the borough of Mt. Gretna which it laid out into building lots and streets. With the curtailment of its literary and cultural activities of recent years, the corporation installed a water system and

furnished service to the houses built upon such lots which were subsequently sold to the general public.

During the year 1930, the Chautauqua cut off the water supply furnished to certain cottages because the occupants were not only delinquent in paying their water and sewer rent, but also in paying their membership assessments. The property owners thus affected volunteered to pay all charges except the assessments, but the Chautauqua refused to install water service until the assessments were paid. Upon complaint, the Pennsylvania commission decided that the Chautauqua was in fact a public utility corporation and had no right to impose a payment for anything else except a reasonable charge for its service as a prerequisite to the restoration of water service. Upon appeal the Chautauqua contended that it was a nonprofit corporation and that the supplying of water was entirely incidental to the purposes of its creation and that it served water only under private contract.

The supreme court of the state, in affirming the commission's order, held that the test of a public utility's status is the nature of the service rendered, and that accordingly a corporation actually functioning as a public utility could not escape regulation on the plea that it had no charter right to render such service. Having determined its public utility status, the court held that service by such a utility could not be cut off in order to enforce payment of a collateral liability. *Pennsylvania Chautauqua v. Public Service Commission et al.*

Village Permitted to Operate Busses in Competition with Private Carrier

THE village of North Olmsted in Ohio is operating a bus line extending to the public square in the city of Cleveland. A private carrier having a certificate of convenience and necessity from the Ohio commission to operate along such route recently sued to enjoin the competitive operations of the village on ground that such operations were unauthorized by law. The Ohio Court of Appeals found that the village was operating its bus service by virtue of a section (§ 6 of Art. 18) of the Ohio Constitution which permits a municipality "to sell and deliver to others any transportation service of such utility in an amount not exceeding 50 per cent of the total service or product supplied by such utility within the municipality." The question to be decided was whether the "50 per cent" should be tested by a mileage basis or by the number of passengers carried, in order to ascertain whether the village was selling more of its service outside of its own corporate limits than inside of them. The court disregarded the mileage test and held that the equipment and facilities used plus the human agencies reasonably necessary to operate them were the proper factors to be considered in determining the constitutional "50 per cent."

Gauged by this test, the court found that the village was operating within its constitutional powers and the private carrier's petition for injunction to prevent operation was accordingly denied. *Southwestern Bus Co. v. Village of North Olmsted et al.*

Formal Rule Necessary to Require Deposits to Guarantee Payment of Telephone Bills

A NORTH Carolina citizen applied sometime ago to a telephone company for service and after paying the usual installation fee and complying

with other general requirements of the company, he was informed that he would be required to make a deposit as a guarantee for the payment of future bills. This the subscriber refused to do and appealed to the courts of the state. It appeared that a manager had a rule that such a deposit should be required from subscribers which were considered bad risks. It was also shown, however, that the rule had never been authorized by either the directors of the corporation or by the North Carolina commission, and that it had been enforced against only a few of the company's numerous subscribers. Under such circumstances, the North Carolina court declared that the rule constituted an unlawful discrimination among its subscribers and granted a writ of mandamus to compel the company to install its service without the payment of such a deposit.

The court also held that a local telephone company having available facilities for handling long-distance messages over the lines of another company for hire and for collecting tolls for such service on its own responsibility from its own subscribers was a public utility corporation under the provisions of the state law and subject to the jurisdiction of the state commission. *Horton v. Interstate Telephone & Telegraph Co.*

Value for Service Used as Basis for Rate Making of an Alabama Joint Utility

It has been held a number of times by the United States Supreme Court that a utility has a right to earn a fair return on the value of its property devoted to public service. In some of the older decisions, however, there was a qualification engendered upon this right of the utility; namely, that rates for utility service should never be in excess of the value of such service to the consumers. Just what the "value of service" would be under such circumstances has been a subject of much academic controversy.

Recently, the Alabama commission, on complaint of a number of electrical consumers in the city of Birmingham, found that the rates charged by the electrical utility in that city exceeded the value of service rendered, and they were reduced without any formal finding as to the value of the property involved. In other words, the commission took the position that a utility's right to earn a fair return is *subordinate* to the right of the consumers to be charged no more than the value of the service rendered to them. The commission's conclusion that the rates charged by the utility to such residential consumers exceeded the value of the service was based on the fact that the rates charged by the utility for its large power users were subject to such competition as to yield little profit, while the rates for small residential and domestic users were not even compensatory. Notwithstanding these two extremes, the total return of the utility from its electrical properties exceeded, in the opinion of the commission, a reasonable return, being estimated to have exceeded 14 per cent annually ever since 1928. Under such circumstances the commission concluded that the rates for the other classes of service, particularly for the average residential users, must necessarily exceed the reasonable value of the service.

The utility involved was operating a joint utility property made up in large part by a street railway property which has given unmistakable evidence of being moribund, since it has operated at increasing loss during the last two years. The utility contended that the reduction proposed by the commission would leave a rate of return insufficient to be regarded as a reasonable return upon the value of its joint properties, considered as a whole. The commission held, however, that the reduction was

not necessarily unlawful simply because the effect would be to reduce net revenue to a figure that would not constitute a fair return upon the consolidated properties. The commission expressly declined to make any decision, however, as to the legality or reasonableness of holding for the future that such utility properties must be dealt with as a single utility operation for rate-making purposes.

The commission also discussed the obligation of a company whose joint utility properties are earning less than a fair return to set aside proceeds from the sale of one branch of its service (in this case gas property) to offset prospective financial drains, rather than to divide such proceeds in dividends among its security holders. *Alabama Public Service Commission v. Birmingham Electric Co. Docket 6284.*

Unreasonable Rate Charges May Be Made a Basis for Reparation Claims

SOME months ago the Pennsylvania courts held in a series of cases that when a commission finds existing rates of a utility unreasonable, it acts in its legislative capacity, but that when it awards reparation for alleged excessive charges it acts in a judicial capacity. Because of the distinction between these two functions, it was held that a commission's finding of unreasonableness of existing rates could not be used as a basis for reparation claims, since that would in effect make the commission's finding of unreasonableness unlawfully retroactive. Under this rule, it would be necessary for the Pennsylvania commission, in order to award a reparation claim, to make a specific finding that the utility's rates had been during a specific period in the past unreasonable by a concrete amount.

The commission has recently declined to apply this theory to proposed rate revisions against which complaints are filed during a 30-day statutory period. The Johnstown Telephone Company, it appeared, on March, 1927, filed a schedule for increased rates against which complaints were filed within the 30-day period. Subsequently, the commission found that the proposed rates were unreasonable and, later still, certain consumers filed petitions for reparation, alleging overcharges. The commission held that, in this situation, a finding of unreasonableness by the commission relates back, in the absence of an express statement to the contrary, to the effective date of the increase and determines that the rates complained against have been excessive during the entire period of their collection, and may, therefore, be the basis for claims to recover excessive collections.

The utility opposed the awarding of the claims on grounds that the amount of overcharges had not been expressly fixed by the commission and that the claims for damages were accordingly not sufficiently specific. The commission held, however, that having ordered the utility to make a flat reduction of 25 cents per month for each subscriber, and such reduction having been submitted to by the utility without complaint, the difference between the reduced rate and the proposed rate was sufficiently specific to form the basis for a claim for reparation of overcharges collected. The commission refused, however, to regard a petition for reparation filed by the mayor of Johnstown on behalf of himself and for "all others who had not filed separate petitions" as a blanket petition on behalf of all unnamed subscribers who failed to file individual petitions of any kind for reparation. Damages were accordingly awarded only to complainants who had filed such individual petitions. *Cooke et al. v. Johnstown Telephone Co. Complaint Docket No. 8864.*